

03-1904-CD  
FULLINGTON AUTO BUS COMPANY, etal. vs. J. RICHARD FULLINGTON, SR.

Date: 08/25/2004

Clearfield County Court of Common Pleas

User: ASELFRIDGE

Time: 01:29 PM

ROA Report

Page 1 of 2

Case: 2003-01904-CD

Current Judge: J. Michael Williamson

Fullington Auto Bus Company, Fullington GMC Sales, Inc. vs. J. Richard Fullington Sr.

Civil Other

Date		Judge
12/31/2003	X Filing: Civil Complaint In Equity, Paid by: Ammerman, David S. (attorney for Fullington Auto Bus Company) Receipt number: 1871300 Dated: 12/31/2003 Amount: \$85.00 (Check) 3 CC to Atty.	No Judge
	X Petition for Preliminary Injunctive Relief filed by Atty. 4 CC to Atty.	No Judge
	X Received Memorandum of Law in Support of Petition for Preliminary Injunctive Relief filed by Atty. 3 CC to Atty. (in error)	No Judge
	X Affidavit of Aerial Fullington Weisman in Support of Petition for Preliminary Injunctive Relief. 4 CC to Atty.	No Judge
01/07/2004	X ORDER, NOW, this 6th day of January, 2004, upon consideration of recusal of both Judges sitting in the 46th Judicial District, it is the ORDER of this Court that the Court Administrator of Clearfield County refer the above-captioned civil matter to Administrative Region Unit II for assignment of a specially presiding judicial authority. by the Court, s/FJA, J. 6 cc C/A	No Judge
01/28/2004	o Petition for Preliminary Injunctive Relief filed by Atty. for Plffs. 4 CC to Atty. Ammerman.	No Judge
missing cc of 8-25-2004	o Affidavit of Aerial Fullington Weisman in Support of Petition for Preliminary Injunctive Relief. 4 CC to Atty.	No Judge
02/04/2004	X Entry of Appearance On Behalf Of J. Richard Fullington, Sr., Defendant. filed by, s/Timothy E. Durant, Esquire 3 cc to Atty Durant Copy to C/A	No Judge
02/18/2004	X ORDER, AND NOW, this 18th day of February, 2004, re: Argument on Plaintiff's Petition for Preliminary Injunctive Relief scheduled for Wednesday, March 3, 2004, at 2:15 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Atty D. Ammerman, Durant and copy to C/A	J. Michael Williamson
02/24/2004	X Answer To Complaint In Equity, New Matter and Counterclaim. filed by, s/Timothy E. Durant, Esquire Verification s/J. Richard Fullington, Sr. 4 cc Atty Durant	J. Michael Williamson
	X Reply To Petition For Preliminary Injunctive Relief. filed by, s/Timothy E. Durant, Esquire Verification s/J. Richard Fullington, Sr. 4 cc Atty Durant	J. Michael Williamson
	X Certificate of Service, Answer To Complaint In Equity, New Matter and Counterclaim and Reply to Petition For Preliminary Injunctive Relief filed on behalf of Defendant upon David S. Ammerman, Esquire and Paul H. Titus, Esquire. filed by, s/Michael Luongo no cc	J. Michael Williamson
03/02/2004	X Joint Motion for Continuance, filed by s/Timothy E. Durant, Esq. s/Paul H. Titus Two CC Attorney Durant	J. Michael Williamson
03/08/2004	X ORDER, AND NOW, this 4th day of March, 2004: Joint Motion for Continuance is GRANTED. by the Court, s/J. Michael Williamson, Judge, 25th Jud. Dist. Sp. Pres. 1 cc Atty Durant, D. Ammerman, and Paul Titus	J. Michael Williamson
03/10/2004	X Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm no cc	J. Michael Williamson

Date: 08/25/2004

Clearfield County Court of Common Pleas

User: ASELFRIIDGE

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ROA Report

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Case: 2003-01904-CD

Current Judge: J. Michael Williamson

Fullington Auto Bus Company, Fullington GMC Sales, Inc. vs. J. Richard Fullington Sr.

Civil Other

Date		Judge
04/01/2004	X Reply To New Matter And Answer And New Matter To Defendant's Counterclaim. s/David S. Ammerman, Esq. s/Paul H. Titus, Esq. Certificate of Service Verification s/Aerial Fullington Weisman 3 cc to Atty	J. Michael Williamson
04/12/2004	Y Reply To Plaintiffs' New Matter In Counterclaim. filed by, s/Timothy E. Durant, Esquire Verification s/J. Richard Fullington 4 cc Atty Durant	J. Michael Williamson
04/22/2004	X Plaintiffs' Motion For Hearing On Petition For Preliminary Injunctive Relief. filed by, s/David S. Ammerman, Esquire s/Paul H. Titus, Esquire Certificate of Service 4 cc to Atty	J. Michael Williamson
04/28/2004	Y ORDER, AND NOW, this 28th day of April, 2004, re: Argument on Plaintiff's Petition for Preliminary Injunctive Relief has been scheduled for Tuesday, May 18, 2004 at 10:00 a.m., before the Honorable J. Michael Williamson, Specially Presiding. by the Court, FJA, P.J. 1 cc Atty D. Ammerman, Durant, Judge J. M. Williamson	J. Michael Williamson
05/13/2004	X Withdrawal Of Appearance On Behalf Of Plaintiffs. filed by, s/David S. Ammerman, Esquire Certificate of Service 2 cc to Atty	J. Michael Williamson
05/18/2004	X CONSENT ORDER, AND NOW, to wit, this 18th day of May, 2004. by the Court, s/J. Michael Williamson, Judge, Specially Presding 1 cc Atty Titus, D. Ammerman, courtesy cope, Durant, Fullington Auto Bus Co. (per D. Ammerman's request) Fullington GMC Sales, Inc. (per D. Ammerman's request)	J. Michael Williamson
05/27/2004	Y ORDER, NOW, this 21st day of May, 2004, counsel are attached on Aug. 31, 2004, Sept. 1, 2004, Sept. 2, 2004, and Sept. 3, 2004, in the above matter, which will be tried w/o a jury if and when the case of Hoffman v. Cherry, No. 00-96-CD is resolved. by the Court, s/ J. Michael Williamson, Judge no cc Copies previously distributed (per letter)	J. Michael Williamson
08/09/2004	X Praeipce to Settle, Discontinue, and Dismiss with Prejudice, filed by s/Timothy E. Durant, Esq. s/Paul H. Titus, Esq. Two CC and 2 Cert. of Disc. to Attorney Durant Copy to C/A	J. Michael Williamson

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION - EQUITY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,

Defendant.

No. 03-1904-CD

TYPE OF PLEADING:  
**COMPLAINT IN EQUITY**

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THESE  
PARTIES:

David S. Ammerman  
Pa. Id. No. 06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus  
Pa. Id. No. 01399  
SCHNADER HARRISON SEGAL & LEWIS  
LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(512) 577-5200

**FILED**

DEC 31 2003

William A. Shaw  
Prothonotary

**COURT ADMINISTRATOR**  
**Clearfield County Courthouse**  
**Second & Market Streets**  
**Clearfield, PA 16830**  
**(814) 765-2641, Ext. 50-51**

1. Plaintiff, FABCO, is a Pennsylvania corporation with a place of business at 316 East Cherry Street, Clearfield, Pennsylvania 16830.
2. Plaintiff, Fullington GMC, is a Pennsylvania corporation with an office at 316 East Cherry Street, Clearfield, Pennsylvania 16830.
3. Defendant, J. Richard Fullington, Sr. ("Fullington, Sr.") is an individual residing at 6 Northwest Fourth Street, Clearfield, Pennsylvania 16830.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over actions in equity under 42 Pa. C.S. § 931(a) and personal jurisdiction over the Defendant in this action pursuant to 42 Pa. C.S. § 5301(a)(1)(i) and (ii).

5. Venue lies in Clearfield County under Pa. R. Civ. P. No. 1503 and 42 Pa. C.S. § 931(c) because the Defendant Fullington, Sr. resides in Clearfield County.

## **BACKGROUND**

6. FABCO employs approximately 450 persons in Clearfield and surrounding counties and is engaged in providing transportation services to the public. As part of those services, FABCO operates motor coaches to provide service on daily Trailways Bus routes to points within Pennsylvania and New York and a limousine service for private and corporate functions. In addition, it provides school bus transportation for five (5) school districts in Clearfield and contiguous counties. FABCO also provides charter bus services to the public, bus service to deploy troops for the United States Department of the Army, and government subsidized intercity bus service.

7. FABCO's shareholders own one hundred (100%) percent of Fullington GMC, a related company. Fullington GMC owns certain real estate and fleet assets and leases such assets to FABCO. FABCO is a cosigner or guarantor of Fullington GMC debt.

8. The Companies' primary office space in Clearfield, Pennsylvania is owned by Fullington, Sr. (the "Premises"). Fullington, Sr. leases the Premises to FABCO.

9. Until May, 2001, FABCO's business was operated and managed by Fullington, Sr. and his eldest son, J. Richard Fullington, Jr. ("Fullington, Jr."). In May, 2001, Fullington, Jr.

was separated from FABCO; however, Fullington, Sr. continued to operate and manage FABCO until August, 2002.

10. On August 27, 2002, Fullington, Jr. was incarcerated for a period of one (1) year following his conviction of various Pennsylvania state theft crimes, including misappropriation of the Companies' funds and misuse of credit. On August 27, 2003, Fullington, Jr. was released from prison and is now serving a one (1) year period of parole. Following the one (1) year parole period, Fullington, Jr. will be on probation for a period of five (5) years.

11. During the time FABCO was managed and operated by Fullington, Sr. and Fullington, Jr., the Companies incurred massive debt in excess of Thirteen Million (\$13,000,000) Dollars ("Debt").

12. In the fall of 2002, the Companies' Debt was in default and the creditors, both as a result of the default and because they were aware of the misconduct of Fullington, Jr., threatened foreclosure of the real estate, repossession of FABCO's fleet of buses and liquidation of the Companies' other assets.

13. In the fall of 2002, in return for their undertaking to reorganize the Companies and their operations, Fullington, Sr. agreed to transfer the controlling interests in FABCO and Fullington GMC to his daughter, Aerial Fullington Weisman ("Aerial"), and son, Michael L. Fullington ("Michael"). Such reorganizations were needed both to save the Companies' businesses and to protect family members, including Fullington, Sr., from the personal liabilities which could flow from a failure of the businesses.

14. On November 27, 2002, Fullington, Sr. transferred seventy-five (75%) percent of the issued and outstanding capital stock of FABCO, and seventy-five (75%) percent of the Class A voting stock of Fullington GMC to Aerial and Michael and relinquished control of the



Companies' businesses to Aerial and Michael. Subsequent thereto, Michael transferred certain shares of FABCO which he owned to Aerial thereby making Aerial majority shareholder of FABCO.

15. At the present time, under Aerial's and Michael's management, the Companies' Debt has been reduced to Eight Million (\$8,000,000) Dollars, forbearance agreements have been negotiated and are in effect with all of the Companies' creditors, all judgments have been lifted, and payments on the Companies' Debt are current. Under Aerial's and Michael's management, FABCO's business operations are becoming profitable.

16. On or about April 17, 2003, a Unanimous Written Consent was executed by the Directors of FABCO naming Aerial the President and Chief Executive Officer and Fullington, Sr. was named Chairman Emeritus. On the same date, a Written Consent was also executed by Aerial and Michael, as Directors of Fullington GMC, naming Aerial as President and Chief Executive Officer of Fullington GMC and Fullington, Sr. was named Chairman Emeritus.

17. In April, 2003, following Aerial's election as President and Chief Executive Officer of FABCO, Fullington, Sr. began to engage in belligerent and disruptive behavior by coming to the Premises and:

(a) stating to FABCO's employees that he, and not Aerial or Michael, was the owner and in charge of FABCO;

(b) making derisive and demeaning comments and statements about the Companies' management to employees and often using loud, profane and vulgar language, which is inappropriate in business offices and highly disturbing to employees;

(c) physically striking Aerial at the Premises in the presence of Michael Peduzzi, FABCO's Chief Financial Officer on July 14, 2003;

- (d) intimidating and berating FABCO's employees;
  - (e) directing the employees to ignore the Companies' management direction;
- and,
- (f) stating to third parties that he was and is in control of FABCO's business.

18. On September 11, 2003, a few weeks following Fullington, Jr.'s release from prison, the Boards of Directors of the Companies met at which time a motion was made and seconded by Fullington, Sr. to adopt resolutions regarding the Companies' disassociation with Fullington, Jr. The directors of FABCO and Fullington GMC, including Fullington, Sr., adopted the following resolutions by unanimous written consent ("Resolutions"):

Resolved that from this date and time, John R. Fullington, Jr.,  
a/k/a J. Richard Fullington, Jr.:

1. Be prohibited from going upon or entering any of the premises owned or leased by the company and a notice be served upon J. Richard Fullington, Jr. that any violation shall be a trespass and charges will be filed.

2. Be prohibited from any form of communicating with any company officers, directors, employees, agents, lenders, lessors, lessees or any person, party, company, partnership, corporation or otherwise who has a business or professional relationship with Fullington GMC Sales, Inc. and/or Fullington Auto Bus Company, concerning or relating to these businesses.

3. That all persons employed by the company be notified of these resolutions by posting the same on conspicuous parts of the company premises.

4. That all employees shall immediately notify an officer of the company in the event of any communication from Dickie [Fullington, Jr.] concerning company business or personnel.

5. That a notice be served upon J. Richard Fullington, Jr. that notice of any violation by him of these resolutions shall be immediately sent to the Pennsylvania Board of Probation and Parole.

6. That no company-related documents, facilities or equipment, including but not limited to financial reports, credit information, books and records of the corporation, including notes, memos, letters, tapes, computer information, files, computers, keys, combinations and vehicles shall be delivered to or otherwise be made available to J. Richard Fullington, Jr. or any third party acting for and in behalf of J. Richard Fullington, Jr.

19. On September 23, 2003, the Directors of FABCO and Fullington GMC amended the respective Company's Bylaws to expressly provide that "[FABCO or Fullington GMC] designates that any convicted felon shall not be allowed to hold shares of the Corporation."

20. The Companies believe that, as a result of years of mismanagement and improper business conduct, Fullington, Jr. can have no participation in any manner in the business, and further believes that any perceived association of Fullington, Jr. with the Companies will have serious adverse consequences in that:

(a) if existing creditors of the Companies come to believe that such an association existed, they would conclude that a breach of the forbearance agreements had occurred;

(b) prospective creditors would decline to extend credit to the Companies because of such perceived association;

(c) existing customers would decline to do further business with the Companies because of such perceived association; and

(d) prospective customers would decline to do business with the Companies because of such perceived association.

21. Notwithstanding the vital importance of disassociating Fullington, Jr. from the Companies, Fullington, Sr. gave the keys to the Premises to Fullington, Jr., and on or about

September 1, 2003, Fullington, Jr. gained access to and entered the Premises by use of keys supplied to him by Fullington, Sr.

22. FABCO immediately reminded Fullington, Sr., after the September 1, 2003 entry by Fullington, Jr., of their concerns about any association with Fullington, Jr. and that Fullington, Jr. was not to be given access to the Premises.

23. On or about September 12, 2003, one (1) day following the approval of the Resolutions, the locks were changed at the Premises. Fullington, Sr. was not provided with a set of keys for the new locks.

24. On or about September 14, 2003, notwithstanding his seconding of the motion to pass the Resolutions, his written approval of the Resolutions and in direct contravention of those Resolutions, Fullington, Sr. again provided keys to Fullington, Jr., who attempted to enter the Premises; however, because the locks were changed, Fullington, Jr. was unable to gain access.

25. On or about September 15, 2003, Fullington, Sr. stated to FABCO's counsel that Aerial and Michael had no authority to act for FABCO and that he would bring Fullington, Jr. back into the Companies' businesses as soon as possible.

26. In light of Fullington, Sr.'s ongoing misbehavior, on or about September 16, 2003, the Board of Directors of FABCO met and duly passed a resolution removing Fullington, Sr. from FABCO's Board of Directors due to his failure to protect FABCO and its creditors and his continuing behavior "which threatens the future of the Company" A similar resolution was passed by the Fullington GMC Board of Directors on or about September 18, 2003.

27. On or about September 22, 2003, counsel for the Companies sent a letter to Fullington, Sr. advising him of his obligations to the Companies (the "Letter"). A true and correct copy of the Letter is attached hereto, incorporated herein and marked for identification as

“Exhibit A”. The Letter further stated that Fullington, Sr.’s access to the Premises was to be limited and that he was to contribute in a positive and appropriate way to the Companies’ ongoing businesses. In return for his agreement to abide by the terms and conditions of the Letter, the Companies were to provide Fullington, Sr. with various types of compensation, including a vehicle. (“Compensation”).

28. In accordance with the express terms of the Letter, the Companies have paid and are paying to Fullington, Sr. the Compensation, and Fullington, Sr. has accepted and is accepting the Compensation. Thus, Fullington, Sr. acquiesced to, accepted and is bound by the terms and conditions of the Letter.

29. Since September 22, 2003, Fullington, Sr. has breached the terms and conditions of the Letter and has violated the Resolutions of September 11, 2003 by:

- (a) continuing to claim to the world that he owns the Companies;
- (b) continuing to assert to the Companies’ employees and third parties that he, and not the Companies’ duly constituted and appointed management, is in control of and operating the Companies;
- (c) continuing to direct the Companies’ employees to ignore or disregard the direction given by management;
- (d) continuing to appear at and remain upon the Premises without complying with the visitation terms set forth in the Agreement;
- (e) attempting to make contracts on behalf of the Companies, including a contract for the purchase of land by FABCO, even though he is without authority to do so;

(f) continuing to proclaim to business and social associates that, once Fullington, Jr. is released from parole, Fullington, Sr. will bring him back into the Companies and together they will again manage and operate the businesses;

(g) demanding that the Companies' management pay a \$50,000.00 debt of Fullington, Jr., even though such debt has nothing to do with the Companies;

(h) continuing to intimidate, harass, berate and disrupt the Companies' employees to the extent that their productivity is impaired and their employment made onerous and burdensome;

(i) calling employees at home and either making demands and/or using foul language with employees and their family members; and,

(j) repeatedly questioning the amounts that the Companies pay to or owe him.

30. On December 22, 2003, Aerial and Michael, along with their spouses, met with Fullington, Sr. at which time they formally notified him of his ongoing misbehavior and the harm it was causing to the Companies. He was reminded of his removal of the Companies' Boards of Directors and his obligations under the terms of the Letter. He was also told that he continued to violate the terms of the Letter to which he agreed by, among other things, repeatedly coming to the Premises without notifying the Companies' legal counsel, calling and harassing the Companies' employees at work and at home and improperly speaking to the Companies' business associates.

31. Fullington, Sr. was again told at the December 22 meeting that:

(a) he was not to advise anyone that he was acting on behalf of the Companies;

(b) he was not to call any of the Companies' employees;

- (c) he was not to come to the Premises; and,
- (d) he was not authorized to act on behalf of the Companies.

32. In addition, payments to be made to Fullington, Sr. were again discussed and he was offered to select one (1) of the two (2) company vehicles which he currently used.

33. At the conclusion of the presentation made at the December 22 meeting, Fullington, Sr. indicated that he understood the terms and conditions that were enunciated and he agreed with everything presented, although he took exception with the statement that he had violated earlier understandings by coming to the Premises. He further stated that he was in total agreement with the decisions made by the Companies' management. Following the meeting, Fullington, Sr. selected one of the vehicles as offered.

34. Notwithstanding the additional promises made by Fullington, Sr. at the December 22 meeting, he continues to violate the terms and conditions of the oral agreements.

#### **REQUEST FOR RELIEF**

35. Paragraphs 1 through 34 of this Complaint are incorporated herein by reference as though they were set forth in full at this point.

36. The conduct of Fullington, Sr., as set forth herein, is in breach of the terms and conditions of the Letter and the terms and conditions outlined at the December 22, 2003 meeting to which he agreed, and is in violation of the duly adopted Resolutions of the Boards of Directors of FABCO and Fullington GMC, which were joined in by Fullington, Sr. while he served as a director of FABCO and Fullington GMC.

37. The conduct of Fullington, Sr., unless restrained by this Court, will cause serious and irreparable harm to the Companies, their employees, creditors and shareholders, and to the public community as a whole as FABCO is one of the largest employers in the area. Such

conduct involves harm to the public interest because of the threat which it poses to the viability of FABCO's business, and the transportation of the public, including the transportation of school students and members of the United States Armed Forces.

38. The Plaintiffs have no adequate remedy at law to redress the current and impending harm from Fullington, Sr.'s continued conduct in that:

- (a) the monetary harm caused by such conduct cannot be readily computed or ascertained;
- (b) the harm to employees, creditors and shareholders of the Companies and to the public by the destruction or serious interference with the business of FABCO is not redressable by money damages; and,
- (c) the harm to employees, creditors and shareholders of the Companies and to the public caused by the destruction of FABCO's reputation is not redressable by money damages.

WHEREFORE, Plaintiffs, The Fullington Auto Bus Company and Fullington GMC Sales, Inc., request that this Court enter an Order specifically enforcing the terms and conditions of the September 22, 2003 Letter and the terms and conditions outlined and accepted at the December 22, 2003 meeting, and enjoining the Defendant from:

- (a) asserting, claiming or representing that he owns or controls the Companies;
- (b) interfering in the business of the Companies by attempting to give orders or directions to employees of the Companies;
- (c) calling, visiting and/or sending letters to the Companies' employees and business associates;




(d) entering upon the Premises at any time except upon providing notice to legal counsel for the Companies and obtaining the agreement of the President of FABCO and then only for purposes of inspecting the Premises as the landlord; and

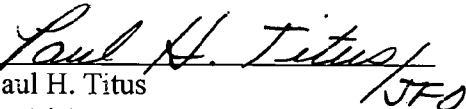
(e) attempting to make any contracts or commitments on behalf of the Companies;

and that this Court grant such other and further relief as the Court deems proper.

Date: December 31, 2003

Respectfully submitted,

By:   
David S. Ammerman  
Pa. Id. No. 06801

By:  JFO  
Paul H. Titus  
Pa. Id. No. 01399

AMMERMAN & AMMERMAN  
210 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

SCHNADER HARRISON SEGAL &  
LEWIS LLP  
2700 Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5200

Attorneys for Plaintiffs,  
THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.

September 22, 2003

Mr. J. Richard Fullington, Sr.  
6 NW 4<sup>th</sup> Avenue  
Clearfield, PA 16830

Dear Richard:

This is a follow-up to the conversation you and we had concerning Fullington GMC Sales, Inc. ("GMC") and The Fullington Auto Bus Company ("FABCO"). We advised you that since we represent GMC and FABCO, we cannot represent you in the matters discussed in this letter. We suggested that you retain separate counsel to assist you.

The issues we discussed were:

1. Ownership of GMC and FABCO, and the agreements and transfers of GMC and FABCO stock made by you;
2. Control and management of GMC and FABCO and your involvement with the management of these companies; and
3. The Lease between you, GMC and FABCO for office space in Clearfield and the compensation to be paid to you by GMC and FABCO.

GMC and FABCO are indebted to the tune of approximately ten million dollars. Forebearance agreements with the lenders have been negotiated and are in place. GMC and FABCO have managed to survive during the last 12 to 14 months. We are negotiating with various lenders about refinancing the GMC/FABCO indebtedness. We have commenced steps to purchase the interests in FABCO from your two cousins.

Dickie is an anathema to existing and potential lenders. Lenders will pull the trigger and repossess their collateral the moment he gets involved with either company. New borrowing opportunities will be closed immediately and probably permanently.

#### Présent Ownership of Stock and Management Control

By Agreement dated November 27, 2002 you transferred 75% of your interest in FABCO and 75% of your Class A voting stock in GMC to Michael and Aerial. You own 11% of FABCO which will increase to 15% once the Bible College interests have been purchased. You own 17% of the GMC voting stock.

#### Fiduciary Obligations of Directors

All of the directors of FABCO and GMC including you have agreed that Dickie cannot have access to any of the facilities of FABCO or GMC or to the books and records or employees of these companies. Members of the Board have been advised by independent sources that you have granted

Mr. J. Richard Fullington, Sr.  
September 22, 2003  
Page Two

Dickie access to the facilities of FABCO. You told us yesterday that you plan to bring Dickie back into the management of FABCO and GMC as soon as his parole has terminated.

Directors and officers of corporations in financial difficulty or insolvency have a fiduciary obligation to their creditors. Breach of those obligations can have very serious consequences for the two companies and for the directors and officers of FABCO and GMC. The Board members of FABCO and GMC believe that your actions and statements are breaches of that fiduciary obligation. Both of the undersigned concur with that conclusion. Due to the serious risk caused by these acts and statements, the Boards of GMC and FABCO and the shareholders have no choice but to remove you as a director and officer of GMC and FABCO.

#### Lease

You are the landlord of the office space used by GMC and FABCO in Clearfield County under a year to year lease with an annual rental of \$14,400.00 payable in monthly installments of \$1,200.00. GMC and FABCO are paying the taxes, insurance, maintenance and other expenses incurred in connection with the operation and ownership of the office building.

#### Ongoing Commitments of GMC and FABCO to You

M&T Bank and other creditors have objected to credit cards in the names of officers and of FABCO. In view of these objections we are canceling those cards, including the ones in your name and FABCO's, and have substituted regular monthly payments described below.

GMC and FABCO propose to make the following payments to or on your behalf:

1. Monthly rental payments of \$1,200.00 for the office space in Clearfield, plus taxes, maintenance and insurance for such space;
2. Monthly payroll of \$750.00 gross payable semi-monthly;
3. Monthly payment of health insurance premium.
4. Monthly stipend of \$200.00 in lieu of Company credit cards;
5. We will continue to pay you \$1,600.00 per month until your 2002 income tax bill is paid in full;
6. Company will pay Sabula taxes, homeowner's insurance, utilities and yard work fees;
7. Company will pay 6 Northwest 4<sup>th</sup> Avenue taxes, homeowners insurance and yard work fees;
8. Company will pay for your Rotary dues; and
9. Company will supply you with a cellular telephone.

Mr. J. Richard Fullington, Sr.  
September 22, 2003  
Page Three

In addition to the above, FABCO and GMC will make a car available to you and will provide the registration, insurance, maintenance and fuel for that vehicle.

#### Non-Monetary Arrangements

As the landlord of the office building, you have the right during normal business hours and upon reasonable notice to inspect the office space which FABCO and GMC lease from you. FABCO and GMC will deliver to you weekly at your residence any mail addressed to you and received at the office. FABCO and GMC will continue to make available to you the financial information generated in the regular course of their business with the understanding that this information is confidential and cannot be shared with anyone.



The officers, directors and employees of GMC and FABCO believe that your presence on FABCO's and GMC's premises has been disruptive and has not contributed to the operation of the business. If you feel that a visit by you to the premises is necessary, please contact David Ammerman who will arrange for such a visit. During any visits, you may of course occupy your office. If your behavior becomes disruptive you will be asked to leave.

The image you project to the public, employees, customers, suppliers and bankers is important. You will contribute materially to FABCO's and GMC's success by dignified, statesmanlike conduct on and off the premises. We are sure that you will not engage in any disruptive or combative conduct which would have a disastrous effect upon the companies.

The ongoing commitments of GMC and FABCO to you are conditioned on your willingness and ability to meet the requirements contained in this letter.

GMC and FABCO have authorized us to review the above arrangements with you and your lawyer.

Very truly yours,

  
David S. Ammerman, Esq.  
Bela A. Karlowitz, Esq.

cc: Aerial F. Weisman, President and C.E.O.  
Michael L. Fullington, Vice President and C.O.O.  
Michael D. Peduzzi, Treasurer and C.F.O.  
A. Lory Fullington, Secretary

**VERIFICATION**

Aerial Fullington Weisman hereby states that she is the President, Chief Executive Officer and majority shareholder of The Fullington Auto Bus Company, and Acting President, Chief Executive Officer and majority shareholder of Fullington GMC Sales, Inc., the Plaintiffs in this action, and that the statements of fact made in the foregoing Complaint in Equity are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

Dated: 12/30/03

Aerial Fullington Weisman  
Aerial Fullington Weisman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION - EQUITY  
and FULLINGTON GMC SALES, INC.,

No. 03-1904-CD

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,

Defendant.

TYPE OF PLEADING:  
**PETITION FOR PRELIMINARY  
INJUNCTIVE RELIEF**

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THESE  
PARTIES:

David S. Ammerman  
Pa. Id. No. 06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
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(814) 765-1701

Paul H. Titus  
Pa. Id. No. 01399  
SCHNADER HARRISON SEGAL & LEWIS  
LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(512) 577-5200

FILED

DEC 31 2003

William A. Shaw  
Prothonotary

**By the Court,**

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – EQUITY**

**THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.,**

**Petitioners/Plaintiffs,**

**v.**

**J. RICHARD FULLINGTON, SR.,**

**Respondent/Defendant.**

**No.** \_\_\_\_\_

**PETITION FOR PRELIMINARY INJUNCTIVE RELIEF**

Plaintiffs, The Fullington Auto Bus Company (“FABCO”) and Fullington GMC Sales, Inc. (“Fullington GMC”) (collectively, the “Companies”), through their undersigned counsel, petition this Court for the issuance of a preliminary injunction pursuant to Pa. R.C.P. No. 1531, and in support thereof allege as follows:

1. The parties to this action are Plaintiffs, FABCO and Fullington GMC, Pennsylvania corporations, and Defendant J. Richard Fullington, Sr., a former officer and director of the Companies, and a minority shareholder of the Companies.

2. The Companies filed a verified Complaint in Equity (“Complaint”) with the Prothonotary of this Court, a true and correct copy of which is attached hereto as Exhibit “A”, and the Affidavit of Aerial Fullington Weisman in support of this Petition for Preliminary Injunctive Relief.



3. Unless enjoined, the actions of Fullington, Sr. are highly likely to result in the diminution or destruction of the Companies' businesses and will, therefore, result in a violation of the Companies' forbearance agreements with their outside lenders.

4. Unless Fullington, Sr. is enjoined preliminarily from further harmful conduct, the status quo will not be preserved and the Companies will be irreparably harmed.

5. The Companies have no adequate remedy at law to redress the current and impending harm from Fullington, Sr.'s continuing breach because:

(a) the loss caused by Fullington, Sr.'s interference with and disruption of the Companies' management and operations cannot be measured in damages; and

(b) the destruction of the Companies with the resultant harm to employees, creditors, shareholders and the general public is also not compensable by money damages.

6. Fullington, Sr. will not suffer any injury if the requested preliminary injunction is issued because the status quo between the parties will be restored to where it was immediately before Fullington, Sr. commenced the harmful conduct as set forth in the attached Complaint and Affidavit.

7. The issuance of the injunction will serve the public interest because, unless an injunction is issued, FABCO's ability to perform its obligations under its agreements with public school districts, the United States Department of the Army, governmental entities and the general public will be jeopardized.

8. The Companies are likely to succeed on the merits of its claims in that:

(a) the obligations of Fullington, Sr. to the Companies arise by agreement and clearly stated corporate resolutions which are clearly binding upon him; and

(b) Fullington, Sr.'s breaches of his obligations are equally clear.

WHEREFORE, Plaintiffs-Petitioners, The Fullington Auto Bus Company and Fullington GMC Sales, Inc. respectfully request that this Court:

(a) Issue a rule to show cause why a preliminary injunction should not be granted against Fullington, Sr.; and

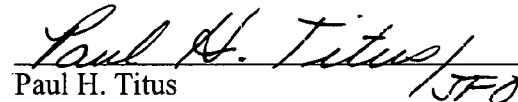
(b) After hearing, issue a preliminary injunction order in the form attached hereto to this Petition.

Date: December 31, 2003

Respectfully submitted,



David S. Ammerman  
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Attorneys for Plaintiffs-Petitioners,  
THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION – EQUITY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

No. \_\_\_\_\_

vs.

**TYPE OF PLEADING:  
COMPLAINT IN EQUITY**

J. RICHARD FULLINGTON, SR.,

FILED ON BEHALF OF: Plaintiffs

Defendant.

**COUNSEL OF RECORD FOR THESE  
PARTIES:**

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**COURT ADMINISTRATOR**  
**Clearfield County Courthouse**  
**Second & Market Streets**  
**Clearfield, PA 16830**  
**(814) 765-2641, Ext. 50-51**

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – EQUITY**

**THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.,**

**Plaintiffs,**

**v.**

**J. RICHARD FULLINGTON, SR.,**

**Defendant.**

**No. \_\_\_\_\_**

**COMPLAINT IN EQUITY**

NOW COME the Plaintiffs, The Fullington Auto Bus Company ('FABCO') and Fullington GMC Sales, Inc. ("Fullington GMC") (collectively, the "Companies"), by and through their undersigned counsel, with their Complaint in Equity, and in support thereof aver as follows:

**PARTIES**

1. Plaintiff, FABCO, is a Pennsylvania corporation with a place of business at 316 East Cherry Street, Clearfield, Pennsylvania 16830.
2. Plaintiff, Fullington GMC, is a Pennsylvania corporation with an office at 316 East Cherry Street, Clearfield, Pennsylvania 16830.
3. Defendant, J. Richard Fullington, Sr. ("Fullington, Sr.") is an individual residing at 6 Northwest Fourth Street, Clearfield, Pennsylvania 16830.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over actions in equity under 42 Pa. C.S. § 931(a) and personal jurisdiction over the Defendant in this action pursuant to 42 Pa. C.S. § 5301(a)(1)(i) and (ii).

5. Venue lies in Clearfield County under Pa. R. Civ. P. No. 1503 and 42 Pa. C.S. § 931(c) because the Defendant Fullington, Sr. resides in Clearfield County.

### **BACKGROUND**

6. FABCO employs approximately 450 persons in Clearfield and surrounding counties and is engaged in providing transportation services to the public. As part of those services, FABCO operates motor coaches to provide service on daily Trailways Bus routes to points within Pennsylvania and New York and a limousine service for private and corporate functions. In addition, it provides school bus transportation for five (5) school districts in Clearfield and contiguous counties. FABCO also provides charter bus services to the public, bus service to deploy troops for the United States Department of the Army, and government subsidized intercity bus service.

7. FABCO's shareholders own one hundred (100%) percent of Fullington GMC, a related company. Fullington GMC owns certain real estate and fleet assets and leases such assets to FABCO. FABCO is a cosigner or guarantor of Fullington GMC debt.

8. The Companies' primary office space in Clearfield, Pennsylvania is owned by Fullington, Sr. (the "Premises"). Fullington, Sr. leases the Premises to FABCO.

9. Until May, 2001, FABCO's business was operated and managed by Fullington, Sr. and his eldest son, J. Richard Fullington, Jr. ("Fullington, Jr."). In May, 2001, Fullington, Jr.

was separated from FABCO; however, Fullington, Sr. continued to operate and manage FABCO until August, 2002.

10. On August 27, 2002, Fullington, Jr. was incarcerated for a period of one (1) year following his conviction of various Pennsylvania state theft crimes, including misappropriation of the Companies' funds and misuse of credit. On August 27, 2003, Fullington, Jr. was released from prison and is now serving a one (1) year period of parole. Following the one (1) year parole period, Fullington, Jr. will be on probation for a period of five (5) years.

11. During the time FABCO was managed and operated by Fullington, Sr. and Fullington, Jr., the Companies incurred massive debt in excess of Thirteen Million (\$13,000,000) Dollars ("Debt").

12. In the fall of 2002, the Companies' Debt was in default and the creditors, both as a result of the default and because they were aware of the misconduct of Fullington, Jr., threatened foreclosure of the real estate, repossession of FABCO's fleet of buses and liquidation of the Companies' other assets.

13. In the fall of 2002, in return for their undertaking to reorganize the Companies and their operations, Fullington, Sr. agreed to transfer the controlling interests in FABCO and Fullington GMC to his daughter, Aerial Fullington Weisman ("Aerial"), and son, Michael L. Fullington ("Michael"). Such reorganizations were needed both to save the Companies' businesses and to protect family members, including Fullington, Sr., from the personal liabilities which could flow from a failure of the businesses.

14. On November 27, 2002, Fullington, Sr. transferred seventy-five (75%) percent of the issued and outstanding capital stock of FABCO, and seventy-five (75%) percent of the Class A voting stock of Fullington GMC to Aerial and Michael and relinquished control of the

Companies' businesses to Aerial and Michael. Subsequent thereto, Michael transferred certain shares of FABCO which he owned to Aerial thereby making Aerial majority shareholder of FABCO.

15. At the present time, under Aerial's and Michael's management, the Companies' Debt has been reduced to Eight Million (\$8,000,000) Dollars, forbearance agreements have been negotiated and are in effect with all of the Companies' creditors, all judgments have been lifted, and payments on the Companies' Debt are current. Under Aerial's and Michael's management, FABCO's business operations are becoming profitable.

16. On or about April 17, 2003, a Unanimous Written Consent was executed by the Directors of FABCO naming Aerial the President and Chief Executive Officer and Fullington, Sr. was named Chairman Emeritus. On the same date, a Written Consent was also executed by Aerial and Michael, as Directors of Fullington GMC, naming Aerial as President and Chief Executive Officer of Fullington GMC and Fullington, Sr. was named Chairman Emeritus.

17. In April, 2003, following Aerial's election as President and Chief Executive Officer of FABCO, Fullington, Sr. began to engage in belligerent and disruptive behavior by coming to the Premises and:

(a) stating to FABCO's employees that he, and not Aerial or Michael, was the owner and in charge of FABCO;

(b) making derisive and demeaning comments and statements about the Companies' management to employees and often using loud, profane and vulgar language, which is inappropriate in business offices and highly disturbing to employees;

(c) physically striking Aerial at the Premises in the presence of Michael Peduzzi, FABCO's Chief Financial Officer on July 14, 2003;



- (d) intimidating and berating FABCO's employees;
  - (e) directing the employees to ignore the Companies' management direction;
- and,
- (f) stating to third parties that he was and is in control of FABCO's business.

18. On September 11, 2003, a few weeks following Fullington, Jr.'s release from prison, the Boards of Directors of the Companies met at which time a motion was made and seconded by Fullington, Sr. to adopt resolutions regarding the Companies' disassociation with Fullington, Jr. The directors of FABCO and Fullington GMC, including Fullington, Sr., adopted the following resolutions by unanimous written consent ("Resolutions"):

Resolved that from this date and time, John R. Fullington, Jr.,  
a/k/a J. Richard Fullington, Jr.:

1. Be prohibited from going upon or entering any of the premises owned or leased by the company and a notice be served upon J. Richard Fullington, Jr. that any violation shall be a trespass and charges will be filed.

2. Be prohibited from any form of communicating with any company officers, directors, employees, agents, lenders, lessors, lessees or any person, party, company, partnership, corporation or otherwise who has a business or professional relationship with Fullington GMC Sales, Inc. and/or Fullington Auto Bus Company, concerning or relating to these businesses.

3. That all persons employed by the company be notified of these resolutions by posting the same on conspicuous parts of the company premises.

4. That all employees shall immediately notify an officer of the company in the event of any communication from Dickie [Fullington, Jr.] concerning company business or personnel.

5. That a notice be served upon J. Richard Fullington, Jr. that notice of any violation by him of these resolutions shall be immediately sent to the Pennsylvania Board of Probation and Parole.

6. That no company-related documents, facilities or equipment, including but not limited to financial reports, credit information, books and records of the corporation, including notes, memos, letters, tapes, computer information, files, computers, keys, combinations and vehicles shall be delivered to or otherwise be made available to J. Richard Fullington, Jr. or any third party acting for and in behalf of J. Richard Fullington, Jr.

19. On September 23, 2003, the Directors of FABCO and Fullington GMC amended the respective Company's Bylaws to expressly provide that "[FABCO or Fullington GMC] designates that any convicted felon shall not be allowed to hold shares of the Corporation."

20. The Companies believe that, as a result of years of mismanagement and improper business conduct, Fullington, Jr. can have no participation in any manner in the business, and further believes that any perceived association of Fullington, Jr. with the Companies will have serious adverse consequences in that:

(a) if existing creditors of the Companies come to believe that such an association existed, they would conclude that a breach of the forbearance agreements had occurred;

(b) prospective creditors would decline to extend credit to the Companies because of such perceived association;

(c) existing customers would decline to do further business with the Companies because of such perceived association; and

(d) prospective customers would decline to do business with the Companies because of such perceived association.

21. Notwithstanding the vital importance of disassociating Fullington, Jr. from the Companies, Fullington, Sr. gave the keys to the Premises to Fullington, Jr., and on or about

September 1, 2003, Fullington, Jr. gained access to and entered the Premises by use of keys supplied to him by Fullington, Sr.

22. FABCO immediately reminded Fullington, Sr., after the September 1, 2003 entry by Fullington, Jr., of their concerns about any association with Fullington, Jr. and that Fullington, Jr. was not to be given access to the Premises.

23. On or about September 12, 2003, one (1) day following the approval of the Resolutions, the locks were changed at the Premises. Fullington, Sr. was not provided with a set of keys for the new locks.

24. On or about September 14, 2003, notwithstanding his seconding of the motion to pass the Resolutions, his written approval of the Resolutions and in direct contravention of those Resolutions, Fullington, Sr. again provided keys to Fullington, Jr., who attempted to enter the Premises; however, because the locks were changed, Fullington, Jr. was unable to gain access.

25. On or about September 15, 2003, Fullington, Sr. stated to FABCO's counsel that Aerial and Michael had no authority to act for FABCO and that he would bring Fullington, Jr. back into the Companies' businesses as soon as possible.

26. In light of Fullington, Sr.'s ongoing misbehavior, on or about September 16, 2003, the Board of Directors of FABCO met and duly passed a resolution removing Fullington, Sr. from FABCO's Board of Directors due to his failure to protect FABCO and its creditors and his continuing behavior "which threatens the future of the Company" A similar resolution was passed by the Fullington GMC Board of Directors on or about September 18, 2003.

27. On or about September 22, 2003, counsel for the Companies sent a letter to Fullington, Sr. advising him of his obligations to the Companies (the "Letter"). A true and correct copy of the Letter is attached hereto, incorporated herein and marked for identification as

"Exhibit A". The Letter further stated that Fullington, Sr.'s access to the Premises was to be limited and that he was to contribute in a positive and appropriate way to the Companies' ongoing businesses. In return for his agreement to abide by the terms and conditions of the Letter, the Companies were to provide Fullington, Sr. with various types of compensation, including a vehicle. ("Compensation").

28. In accordance with the express terms of the Letter, the Companies have paid and are paying to Fullington, Sr. the Compensation, and Fullington, Sr. has accepted and is accepting the Compensation. Thus, Fullington, Sr. acquiesced to, accepted and is bound by the terms and conditions of the Letter.

29. Since September 22, 2003, Fullington, Sr. has breached the terms and conditions of the Letter and has violated the Resolutions of September 11, 2003 by:

- (a) continuing to claim to the world that he owns the Companies;
- (b) continuing to assert to the Companies' employees and third parties that he, and not the Companies' duly constituted and appointed management, is in control of and operating the Companies;
- (c) continuing to direct the Companies' employees to ignore or disregard the direction given by management;
- (d) continuing to appear at and remain upon the Premises without complying with the visitation terms set forth in the Agreement;
- (e) attempting to make contracts on behalf of the Companies, including a contract for the purchase of land by FABCO, even though he is without authority to do so;

(f) continuing to proclaim to business and social associates that, once Fullington, Jr. is released from parole, Fullington, Sr. will bring him back into the Companies and together they will again manage and operate the businesses;

(g) demanding that the Companies' management pay a \$50,000.00 debt of Fullington, Jr., even though such debt has nothing to do with the Companies;

(h) continuing to intimidate, harass, berate and disrupt the Companies' employees to the extent that their productivity is impaired and their employment made onerous and burdensome;

(i) calling employees at home and either making demands and/or using foul language with employees and their family members; and,

(j) repeatedly questioning the amounts that the Companies pay to or owe him.

30. On December 22, 2003, Aerial and Michael, along with their spouses, met with Fullington, Sr. at which time they formally notified him of his ongoing misbehavior and the harm it was causing to the Companies. He was reminded of his removal of the Companies' Boards of Directors and his obligations under the terms of the Letter. He was also told that he continued to violate the terms of the Letter to which he agreed by, among other things, repeatedly coming to the Premises without notifying the Companies' legal counsel, calling and harassing the Companies' employees at work and at home and improperly speaking to the Companies' business associates.

31. Fullington, Sr. was again told at the December 22 meeting that:

(a) he was not to advise anyone that he was acting on behalf of the Companies;

(b) he was not to call any of the Companies' employees;

(c) he was not to come to the Premises; and,

(d) he was not authorized to act on behalf of the Companies.

32. In addition, payments to be made to Fullington, Sr. were again discussed and he was offered to select one (1) of the two (2) company vehicles which he currently used.

33. At the conclusion of the presentation made at the December 22 meeting, Fullington, Sr. indicated that he understood the terms and conditions that were enunciated and he agreed with everything presented, although he took exception with the statement that he had violated earlier understandings by coming to the Premises. He further stated that he was in total agreement with the decisions made by the Companies' management. Following the meeting, Fullington, Sr. selected one of the vehicles as offered.

34. Notwithstanding the additional promises made by Fullington, Sr. at the December 22 meeting, he continues to violate the terms and conditions of the oral agreements.

#### **REQUEST FOR RELIEF**

35. Paragraphs 1 through 34 of this Complaint are incorporated herein by reference as though they were set forth in full at this point.

36. The conduct of Fullington, Sr., as set forth herein, is in breach of the terms and conditions of the Letter and the terms and conditions outlined at the December 22, 2003 meeting to which he agreed, and is in violation of the duly adopted Resolutions of the Boards of Directors of FABCO and Fullington GMC, which were joined in by Fullington, Sr. while he served as a director of FABCO and Fullington GMC.

37. The conduct of Fullington, Sr., unless restrained by this Court, will cause serious and irreparable harm to the Companies, their employees, creditors and shareholders, and to the public community as a whole as FABCO is one of the largest employers in the area. Such

conduct involves harm to the public interest because of the threat which it poses to the viability of FABCO's business, and the transportation of the public, including the transportation of school students and members of the United States Armed Forces.

38. The Plaintiffs have no adequate remedy at law to redress the current and impending harm from Fullington, Sr.'s continued conduct in that:

- (a) the monetary harm caused by such conduct cannot be readily computed or ascertained;
- (b) the harm to employees, creditors and shareholders of the Companies and to the public by the destruction or serious interference with the business of FABCO is not redressable by money damages; and,
- (c) the harm to employees, creditors and shareholders of the Companies and to the public caused by the destruction of FABCO's reputation is not redressable by money damages.

WHEREFORE, Plaintiffs, The Fullington Auto Bus Company and Fullington GMC Sales, Inc., request that this Court enter an Order specifically enforcing the terms and conditions of the September 22, 2003 Letter and the terms and conditions outlined and accepted at the December 22, 2003 meeting, and enjoining the Defendant from:

- (a) asserting, claiming or representing that he owns or controls the Companies;
- (b) interfering in the business of the Companies by attempting to give orders or directions to employees of the Companies;
- (c) calling, visiting and/or sending letters to the Companies' employees and business associates;


(d) entering upon the Premises at any time except upon providing notice to legal counsel for the Companies and obtaining the agreement of the President of FABCO and then only for purposes of inspecting the Premises as the landlord; and

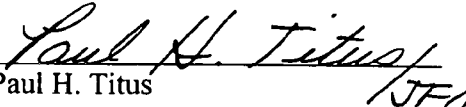
(e) attempting to make any contracts or commitments on behalf of the Companies;

and that this Court grant such other and further relief as the Court deems proper.

Date: December 31, 2003

Respectfully submitted,

By:   
David S. Ammerman  
Pa. Id. No. 06801

By:   
Paul H. Titus  
Pa. Id. No. 01399

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Attorneys for Plaintiffs,  
THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.



September 22, 2003

Mr. J. Richard Fullington, Sr.  
6 NW 4<sup>th</sup> Avenue  
Clearfield, PA 16830

Dear Richard:

This is a follow-up to the conversation you and we had concerning Fullington GMC Sales, Inc. ("GMC") and The Fullington Auto Bus Company ("FABCO"). We advised you that since we represent GMC and FABCO, we cannot represent you in the matters discussed in this letter. We suggested that you retain separate counsel to assist you.

The issues we discussed were:

1. Ownership of GMC and FABCO, and the agreements and transfers of GMC and FABCO stock made by you;
2. Control and management of GMC and FABCO and your involvement with the management of these companies; and
3. The Lease between you, GMC and FABCO for office space in Clearfield and the compensation to be paid to you by GMC and FABCO.

GMC and FABCO are indebted to the tune of approximately ten million dollars. Forebearance agreements with the lenders have been negotiated and are in place. GMC and FABCO have managed to survive during the last 12 to 14 months. We are negotiating with various lenders about refinancing the GMC/FABCO indebtedness. We have commenced steps to purchase the interests in FABCO from your two cousins.

Dickie is an anathema to existing and potential lenders. Lenders will pull the trigger and repossess their collateral the moment he gets involved with either company. New borrowing opportunities will be closed immediately and probably permanently.

#### Present Ownership of Stock and Management Control

By Agreement dated November 27, 2002 you transferred 75% of your interest in FABCO and 75% of your Class A voting stock in GMC to Michael and Aerial. You own 11% of FABCO which will increase to 15% once the Bible College interests have been purchased. You own 17% of the GMC voting stock.

#### Fiduciary Obligations of Directors

All of the directors of FABCO and GMC including you have agreed that Dickie cannot have access to any of the facilities of FABCO or GMC or to the books and records or employees of these companies. Members of the Board have been advised by independent sources that you have granted

Mr. J. Richard Fullington, Sr.  
September 22, 2003  
Page Three

In addition to the above, FABCO and GMC will make a car available to you and will provide the registration, insurance, maintenance and fuel for that vehicle.

#### Non-Monetary Arrangements

As the landlord of the office building, you have the right during normal business hours and upon reasonable notice to inspect the office space which FABCO and GMC lease from you. FABCO and GMC will deliver to you weekly at your residence any mail addressed to you and received at the office. FABCO and GMC will continue to make available to you the financial information generated in the regular course of their business with the understanding that this information is confidential and cannot be shared with anyone.

The officers, directors and employees of GMC and FABCO believe that your presence on FABCO's and GMC's premises has been disruptive and has not contributed to the operation of the business. If you feel that a visit by you to the premises is necessary, please contact David Ammerman who will arrange for such a visit. During any visits, you may of course occupy your office. If your behavior becomes disruptive you will be asked to leave.

The image you project to the public, employees, customers, suppliers and bankers is important. You will contribute materially to FABCO's and GMC's success by dignified, statesmanlike conduct on and off the premises. We are sure that you will not engage in any disruptive or combative conduct which would have a disastrous effect upon the companies.

The ongoing commitments of GMC and FABCO to you are conditioned on your willingness and ability to meet the requirements contained in this letter.

GMC and FABCO have authorized us to review the above arrangements with you and your lawyer.

Very truly yours,



David S. Ammerman, Esq.



Bela A. Karlowitz, Esq.

cc: Aerial F. Weisman, President and C.E.O.  
Michael L. Fullington, Vice President and C.O.O.  
Michael D. Peduzzi, Treasurer and C.F.O.  
A. Lory Fullington, Secretary

### VERIFICATION

Aerial Fullington Weisman hereby states that she is the President, Chief Executive Officer and majority shareholder of The Fullington Auto Bus Company, and Acting President, Chief Executive Officer and majority shareholder of Fullington GMC Sales, Inc., the Plaintiffs in this action, and that the statements of fact made in the foregoing Complaint in Equity are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

Dated: 12/30/03

Aerial Fullington Weisman  
Aerial Fullington Weisman

2. Petitioners-Plaintiffs shall cause copies of this Rule to Show Cause, the Complaint in Equity, the Petition for Preliminary Injunctive Relief and the Affidavit of Aerial Fullington Weisman to be served upon all parties in interest at least five (5) days before the date of the hearing.

1. Enjoined from interfering in any way with the business operations of the Plaintiffs;

2. Enjoined from making any remarks of a disparaging nature to or about Plaintiffs' management and business operations;

3. Enjoined from making statements that he owns and/or controls the Plaintiffs and their business operations;

4. Enjoined from entering upon Plaintiffs' places of business except for the limited purposes set forth in the Letter of September 22, 2003 and only after making arrangements in advance with counsel for the Plaintiffs;

5. Enjoined from making comments or statements that he will cause or permit J. Richard Fullington, Jr. to become involved in Plaintiffs' business or the operation of Plaintiffs' business;

6. Enjoined from harassing Plaintiffs' employees;

7. Enjoined from doing any act which violates the terms of the Letter of September 22, 2003 and the terms as outlined at the December 22, 2003 meeting with Plaintiffs' management;

8. Enjoined from withholding Plaintiffs' property, including but not limited to, the Cadillac vehicle which is a company-owned vehicle and currently being held by Defendant; and,

9. Directed to perform and otherwise comply with his obligations to the Plaintiffs under such agreements.

This Order shall remain in full force and effect until such time as modified or vacated by this Court.

This Order is conditioned upon Plaintiffs' filing an approval bond in the amount of \$\_\_\_\_\_.

\_\_\_\_\_

Mr. J. Richard Fullington, Sr.  
September 22, 2003  
Page Two

Dickie access to the facilities of FABCO. You told us yesterday that you plan to bring Dickie back into the management of FABCO and GMC as soon as his parole has terminated.

Directors and officers of corporations in financial difficulty or insolvency have a fiduciary obligation to their creditors. Breach of those obligations can have very serious consequences for the two companies and for the directors and officers of FABCO and GMC. The Board members of FABCO and GMC believe that your actions and statements are breaches of that fiduciary obligation. Both of the undersigned concur with that conclusion. Due to the serious risk caused by these acts and statements, the Boards of GMC and FABCO and the shareholders have no choice but to remove you as a director and officer of GMC and FABCO.

#### Lease

You are the landlord of the office space used by GMC and FABCO in Clearfield County under a year to year lease with an annual rental of \$14,400.00 payable in monthly installments of \$1,200.00. GMC and FABCO are paying the taxes, insurance, maintenance and other expenses incurred in connection with the operation and ownership of the office building.

#### Ongoing Commitments of GMC and FABCO to You

M&T Bank and other creditors have objected to credit cards in the names of officers and of FABCO. In view of these objections we are canceling those cards, including the ones in your name and FABCO's, and have substituted regular monthly payments described below.

GMC and FABCO propose to make the following payments to or on your behalf:

1. Monthly rental payments of \$1,200.00 for the office space in Clearfield, plus taxes, maintenance and insurance for such space;
2. Monthly payroll of \$750.00 gross payable semi-monthly;
3. Monthly payment of health insurance premium.
4. Monthly stipend of \$200.00 in lieu of Company credit cards;
5. We will continue to pay you \$1,600.00 per month until your 2002 income tax bill is paid in full;
6. Company will pay Sabula taxes, homeowner's insurance, utilities and yard work fees;
7. Company will pay 6 Northwest 4<sup>th</sup> Avenue taxes, homeowners insurance and yard work fees;
8. Company will pay for your Rotary dues; and
9. Company will supply you with a cellular telephone.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION – EQUITY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,

Defendant.

No. 03-1904-CD

TYPE OF PLEADING:

**AFFIDAVIT OF AERIAL FULLINGTON  
WEISMAN IN SUPPORT OF PETITION  
FOR PRELIMINARY INJUNCTIVE  
RELIEF**

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THESE  
PARTIES:

David S. Ammerman  
Pa. Id. No. 06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus  
Pa. Id. No. 01399  
SCHNADER HARRISON SEGAL & LEWIS  
LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(512) 577-5200

**FILED**

DEC 31 2003

William A. Shaw  
Prothonotary



Counsel for Plaintiffs-Petitioners

**AFFIDAVIT**

**COMMONWEALTH OF PENNSYLVANIA**

**COUNTY OF ALLEGHENY**

§§:

NOW APPEARS **AERIAL FULLINGTON WEISMAN** and, after being duly sworn according to law, hereby deposes and states as follows:

1. I am the President and Chief Executive Officer of The Fullington Auto Bus Company ("FABCO") and the controlling shareholder of FABCO. I am also an Officer and Director of Fullington GMC Sales, Inc. ("Fullington GMC") and the controlling shareholder of Fullington GMC. I am authorized by FABCO and Fullington GMC to make this Affidavit in support of the Petition for Preliminary Injunctive Relief.

2. FABCO, which was incorporated in 1917, is a closely-held, family-owned bus company and a premier transportation service provider in the Central Pennsylvania market area. It employs approximately 450 persons in the Clearfield, Pennsylvania area and is one of the largest employers in the area. For five (5) school districts in Pennsylvania, FABCO provides school bus services. FABCO also operates motor coaches to provide service on daily Trailways routes to points within Pennsylvania and New York. Additionally, motor coaches are used for a variety of charter bookings, including shuttling of college athletic teams, school field trips, military movements, rentals to other operators, and prepackaged tours. FABCO also provides intercity bus service pursuant to government contracts and operates a limousine service for both private and corporate functions.

3. FABCO's shareholders have a combined one hundred (100%) percent ownership interest in Fullington GMC, a related company. Fullington GMC's current operations consist solely of owning real estate and fleet assets and leasing such assets to FABCO. FABCO is a cosigner and guarantor of Fullington GMC debt.

4. FABCO and Fullington GMC both operate primarily from 316 East Cherry Street, Clearfield, Pennsylvania 16830 ("Premises"). The Premises are owned by my father, J. Richard Fullington, Sr. ("Fullington, Sr.") and he leases the Premises to FABCO.

5. Until August, 2002, FABCO's and Fullington GMC's businesses were operated and managed by Fullington, Sr. My brother, J. Richard Fullington, Jr. ("Fullington, Jr."), who was also involved in the operation and management of FABCO and Fullington GMC, was separated from both companies in May of 2001.

6. On August 27, 2002, Fullington, Jr. was incarcerated for a period of one (1) year following his conviction of state theft crimes, including misappropriation of FABCO's and Fullington GMC's funds and misuse of credit. Fullington, Jr. was released from prison on or about August 27, 2003 and he currently is on parole for a period of one (1) year followed by probation for five (5) years.

7. After Fullington, Jr.'s conviction and imprisonment, it was realized that, during the time FABCO was managed and operated by Fullington, Sr. and Fullington, Jr., FABCO and Fullington GMC incurred massive debt in excess of Thirteen Million (\$13,000,000) Dollars.

8. By the Fall of 2002, FABCO and Fullington GMC were in default with their lenders and creditors. The lenders and creditors threatened foreclosure of the real estate, repossession of FABCO's fleet of buses, and liquidation of other corporate assets. The lenders and creditors were not only concerned about the defaults, but they were also aware and concerned about Fullington, Jr.'s misconduct.

9. In order to satisfy the demands of the creditors and lenders and to meet their requirements to execute forbearance agreements, it was agreed that FABCO and Fullington GMC had to be reorganized. Thus, Fullington, Sr. agreed to transfer the controlling interests in FABCO and Fullington GMC to my brother, Michael Fullington ("Michael") and me. This reorganization was not only needed to save the businesses, but also to protect family members, including Fullington, Sr., from the personal liabilities that would flow from the failed businesses.

10. On November 27, 2002, Fullington, Sr. transferred seventy-five (75%) percent of the issued and outstanding capital stock of FABCO and seventy-five (75%) percent of the Class A voting stock of Fullington GMC to Michael and me. Subsequent thereto, Michael transferred some of his shares in FABCO to me making me the majority shareholder. In addition, Fullington, Sr. relinquished control of the operations of FABCO and Fullington GMC to Michael and me.

11. In or about April, 2003, I was elected as President and Chief Executive Officer of FABCO. Michael became the Vice President and Chief Operating Officer of FABCO and Fullington. Sr. became Chairman Emeritus of both FABCO and Fullington GMC. I have also served as Acting President of Fullington GMC since Fullington, Sr. relinquished management control.

12. Under the management and control of Michael and me, the debt of FABCO and Fullington GMC has been significantly reduced through, among other things, 1) scheduled and catch-up debt service payments, 2) accelerated payoffs of Fullington GMC debt using proceeds from creditor-approved sales of nonproductive assets pledged as security, and 3) tightly controlled budgetary measures that were put into place by the Companies' Chief Financial Officer, Michael Peduzzi, a Certified Public Accountant who was hired in or about January, 2003 by Michael and me to fill the newly-created position.

13. Following my election as President and Chief Executive Officer of FABCO, Fullington, Sr. began to engage in belligerent and disruptive behavior. He would come to the Premises and with loud, vulgar and demeaning language tell FABCO employees that he, and not I, was in charge and that employees were to ignore current FABCO management's directives. He intimidated and berated the FABCO employees, many of whom have been long-term, loyal and extremely valued employees for the company. Fullington, Sr. also struck me in the presence

of the Chief Financial Officer of FABCO. He also told third parties that he is in control of FABCO.

14. Upon the release of Fullington, Jr. from prison, the directors of FABCO and Fullington GMC adopted Resolutions, a copy of which is attached hereto and marked as "Attachment 1". Fullington, Sr. seconded the motions to approve the Resolutions and, as evidenced by Attachment 1, Fullington, Jr. signed the Resolutions as a Director of both companies.

15. In addition, on September 23, 2003, the Directors of FABCO and Fullington GMC amended each companies' respective Bylaws to expressly provide that "any convicted felon shall not be allowed to hold shares" in the respective companies.

16. The passing of the Resolutions and the amendment of the Bylaws were done since the Directors of FABCO and Fullington GMC believed that, as a result of the years of mismanagement and improper business conduct, Fullington, Jr. could have no participation in any manner in the businesses. Further, any perceived association of Fullington, Jr. with the companies would seriously harm the companies' relationships with their lenders, creditors, current business customers and prospective business customers.

17. Even though Fullington, Jr. was to have nothing to do with the businesses, Fullington, Sr. gave keys to the Premises to Fullington, Jr. and, on or about September 1, 2003, Fullington, Jr. gained access to the Premises. Fullington, Sr. was immediately told about the concerns of having Fullington, Jr. gain access to the Premises and he was told not to provide Fullington, Jr. with the keys. Notwithstanding this reminder and the subsequent passing of the Resolutions by the companies' directors, including Fullington, Sr., Fullington, Sr. again gave his keys to the Premises to Fullington, Jr. who attempted to gain entry on or about September 14, 2003. However, Fullington Jr.'s efforts to gain access to the Premises were thwarted because the Premises' locks were changed on or about September 12, 2003 (following the passing of the Resolutions) and Fullington, Sr.'s keys no longer worked.

18. In light of Fullington, Sr.'s inappropriate actions which posed serious risks to the business of FABCO and the relationship of FABCO and Fullington GMC to its creditors and lenders, Fullington, Sr. was removed as a director of both companies. In addition, the counsel for the companies sent a letter to Fullington, Sr. dated September 22, 2003 that provided, in part, that he was not to visit the Premises, except for inspection as landlord, and that he had to arrange for such a visit through legal counsel. In addition, he would cease from making representations to the FABCO employees, the public, customers, suppliers, lenders and creditors that would harm FABCO and/or Fullington GMC. In exchange for these promises, certain payments were to be made by FABCO and Fullington GMC to Fullington, Sr. A copy of this Letter is attached to the Complaint and marked as "Exhibit A".

19. Notwithstanding the terms of the Letter to which Fullington, Sr. agreed, Fullington, Sr. has told and continues to tell FABCO employees and business associates that 1) he is in control of FABCO, 2) FABCO's current management is to be ignored; 3) he operates FABCO; and, 4) Fullington, Jr. will again assist in the management and operation of the

businesses once he is released from parole. He also continues to visit the Premises in violation of the terms of the Letter and threatens and intimidates the FABCO employees, calls FABCO employees at their homes threatening and intimidating them with vulgar and vile language, tells FABCO business associates and other third parties that he is in control of FABCO and is responsible for its operations, attempts to contract on behalf of FABCO even though he has no authority to do so, and demands payments of money from FABCO and Fullington GMC to which he is not legally entitled.

20. On December 22, 2003, I and Michael, along with our spouses, met with Fullington, Sr. and reiterated the terms and conditions to which he had previously agreed. He, again, agreed verbally with the terms and conditions as set forth at the meeting.

21. Notwithstanding his verbal agreement to the terms and conditions, as recently as December 26, 2003, Fullington, Sr. directed the Clearfield Chief of Police to evict FABCO and Fullington GMC from the Premises even though he has no legal basis to do so.

FURTHER THE AFFIANT SAYETH NOT.

Aerial Fullington Weisman  
Aerial Fullington Weisman

SWORN TO AND SUBSCRIBED

before me this 30<sup>th</sup> day of December,

200~~3~~<sup>3</sup>.

Mary Virginia Rodgers  
Notary Public

My Commission expires:

Notarial Seal  
Mary Virginia Rodgers, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires Nov. 29, 2004  
Member, Pennsylvania Association of Notaries

I, APRIL L. FULLINGTON, being Secretary of Fullington GMC Sales, Inc. and Fullington Auto Bus Company, do hereby certify that the following resolutions were unanimously passed at a special joint meeting held at 1:30 p.m. on Thursday, September 11, 2003 at the residence of J. Richard Fullington, Sr. 6 NW Fourth Avenue, Clearfield, Pennsylvania.

  
April L. Fullington, Secretary

All of us are aware that Fullington Auto Bus Company and Fullington GMC Sales, Inc. were brought to the brink of bankruptcy by the actions of one man. We call him "Dickie" but court records and the business community know him by various names; J. Richard Fullington, Jr., John R. Fullington, Jr., Richard Fullington, Richard J. Fullington and other variations, all of which Dickie has used in his personal and corporate transactions.

Our company problems began on or about 1994 when Dickie approached his parents about Fullington GMC Sales buying the franchise rights to Buick, Oldsmobile, Pontiac and Cadillac from Strattan Motors. Dickie told his parents General Motors would not approve the purchase unless he, Dickie, had at least 51% of Fullington GMC Sales stock. Of course Dickie's father and mother gave Dickie the stock even though this made them minority shareholders. It was a lie. Dickie only needed 15% of the stock to satisfy General Motors, not 51%. Dickie had deceived his own father and mother to gain control of the company and from this point on Dickie went on a spree of buying and heavily financing buildings, land and equipment using GMC and the bus company credit and cash, but often taking title in his own name or jointly with his wife. Look at the Dollar Store, the Pentz properties, the car dealership property and even the Arrowhead Restaurant. Millions of dollars of debt were accumulated and who was debtor? The family business. Who personally guaranteed the debt? Dickie's father and mother, our parents.

Finally, the house of cards began to fall. Creditors were calling regularly asking for money. We were falling behind in payments to banks and suppliers and were beginning to worry about making payroll. We had 450 loyal employees who depended upon the company and were in danger of losing their jobs.

The end for Dickie really began when Dick, Sr., a director and officer in Fullington GMC Sales, Inc., asked for a company meeting with Dickie to find out what was going on. Dick, Sr. got his answer when Dickie, as 51% owner of the GMC Sales stock, threw out his own father as a director and officer of GMC Sales. From that point on litigation ensued. Dickie was exposed in open court as having deceived his parents and Dickie committed a series of violations of the law resulting first in a sentence of 1 year in the Clearfield County Jail and later, on further charges of deception, to a 1 to 2 year sentence in state prison.

This and more could be recited here. The point is that we all know how close we came to losing our company and it is not over yet. Our good name of 100 years in business became poison to banks. Only because Dickie was out of the way in jail, were we able to reorganize, get our financial records straight, make payments and payroll. It has cost us dearly, selling assets we did not want to sell to pay creditors and do all of the other things necessary to run lean and regain our good name.

But now Dickie is out of jail and already giving signals of trouble ahead for the company. We must do something to prevent this from happening. Accordingly, I am asking the Board of Directors to pass the following resolutions:

Resolved that from this date and time, John R. Fullington, Jr., a/k/a J. Richard Fullington, Jr.:

1. Be prohibited from going upon or entering any of the premises owned or leased by the company and a notice be served upon J. Richard Fullington, Jr. that any violation shall be a trespass and charges will be filed.
2. Be prohibited from any form of communicating with any company officers, directors, employees, agents, lenders, lessors, lessees or any person, party, company, partnership, corporation or otherwise who has a business or professional relationship with Fullington GMC Sales, Inc. and/or Fullington Auto Bus Company, concerning or relating to these businesses.
3. That all persons employed by the company be notified of these resolutions by posting the same on conspicuous parts of the company premises.
4. That all employees shall immediately notify an officer of the company in the event of any communication from Dickie concerning company business or personnel.
5. That a notice be served upon J. Richard Fullington, Jr. that notice of any violation by him of these resolutions shall be immediately sent to the Pennsylvania Board of Probation and Parole.
6. That no company related documents, facilities or equipment, including but not limited to financial reports, credit information, books and records of the corporation, including notes, memos, letters, tapes, computer information, files, computers, keys, combinations and vehicles shall be delivered to or otherwise be made available to J. Richard Fullington, Jr. or any third party acting for and in behalf of J. Richard Fullington, Jr.

*Will Full*

9/11/03

*Arrial Fullington-Kensman* 9/11/03

*J. Richard Fullington Jr.*

9/11/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,  
Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,  
Defendant.

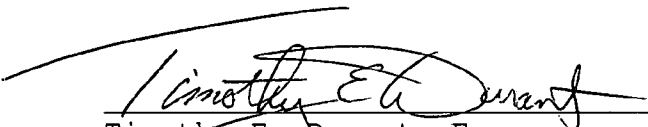
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No. 03-1904-CD

COMPLAINT IN EQUITY

**ENTRY OF APPEARANCE**

Please enter my appearance for J. Richard Fullington, Sr.,  
Defendant, in regard to the above-captioned matter.



Timothy E. Durant, Esquire  
I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
(814) 765-1711

Dated: February 4, 2004

**FILED**

**FEB 04 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.

vs.

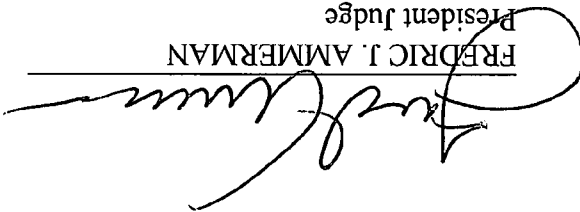
J. RICHARD FULLINGTON, SR.

No. 03-1904-CD

ORDER

NOW, this 6 day of January, 2004, upon consideration of  
recusal of both Judges sitting in the 46<sup>th</sup> Judicial District, it is the ORDER of this  
Court that the Court Administrator of Clearfield County refer the above-captioned  
civil matter to Administrative Regional Unit II for assignment of a specially presiding  
judicial authority.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED

JAN 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

CAH

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

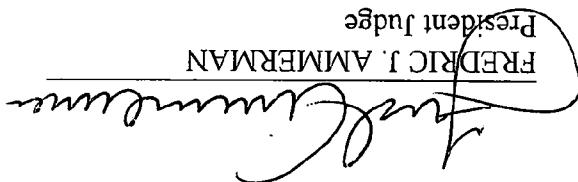
THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.  
vs.  
J. RICHARD FULLINGTON, SR.

No. 03-1904-CD

**ORDER**

AND NOW, this 18 day of February, 2004, it is the ORDER of the Court that argument on Plaintiff's Petition for Preliminary Injunctive Relief in the above matter has been scheduled for Wednesday, March 3, 2004 at 2:15 P.M., before the Honorable J. Michael Williamson, Specially Presiding, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED

FEB 18 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,  
Plaintiffs,

vs.

J, RICHARD FULLINGTON, SR.,  
Defendant

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No. 03-1904-CD

ANSWER TO COMPLAINT IN EQUITY,  
NEW MATTER AND COUNTERCLAIM

FILED ON BEHALF OF: Defendant

COUNSEL FOR THIS PARTY:

Timothy E. Durant  
Pa. I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
814-765-1711

OPPOSING COUNSEL:

David S. Ammerman  
Pa. Id. No. 06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus  
Pa. Id. No. 01399  
SCHNADER, HARRISON, SEGAL & LEWIS,  
LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(512) 577-5200

**FILED**

**FEB 24 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,  
Defendant.

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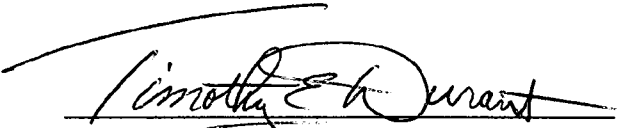
No. 03-1904-CD

Notice to All Plaintiffs  
c/o counsel

**NOTICE TO PLEAD**

You are hereby notified to file a written response to the enclosed new Matter and Counterclaim within 20 days from service hereof or a judgment may be entered against you,

February 24, 2004

  
Timothy E. Durant  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,  
Defendant.

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No. 03-1904-CD

**ANSWER, NEW MATTER AND COUNTERCLAIM TO COMPLAINT IN EQUITY**

NOW COMES the Defendant, J. Richard Fullington, Sr. by and through his undersigned counsel,  
and answers the Complaint in Equity, as follows:

**PARTIES**

1. Admitted that Plaintiff, FABCO, is a Pennsylvania corporation with a place of business at 316 East Cherry Street, Clearfield, Pennsylvania 16830.
2. Admitted that Plaintiff, Fullington GMC, is a Pennsylvania corporation with an office at 316 East Cherry Street, Clearfield, Pennsylvania 16830.
3. Admitted that Defendant, J. Richard Fullington, Sr. ("Fullington, Sr.") is an individual residing at 6 Northwest Fourth Street, Clearfield, Pennsylvania 16830.

**JURISDICTION AND VENUE**

4. Admitted that this Court has subject matter jurisdiction over actions in equity under 42 Pa. C.S. §931(a) and personal jurisdiction over the Defendant in this action pursuant to 42 Pa. C.S. §530 1(a)(1)(i) and (ii).

5. Admitted that Venue lies in Clearfield County under Pa. R. Civ. P. No. 1503 and 42 Pa. C.S. §931(c) because the Defendant Fullington, Sr. resides in Clearfield County.

### **BACKGROUND**

6. Defendant believes that these allegations are correct but denies that they are relevant for purposes of this Equity Action.

7. Admitted that FABCO's shareholders own one hundred (100%) percent of Fullington GMC, a related company. Fullington GMC owns certain real estate and fleet assets and leases such assets to FABCO. FABCO is a cosigner or guarantor of Fullington GMC debt.

8. Admitted that the Companies' primary office space in Clearfield, Pennsylvania is owned by Fullington, Sr. (the "Premises"). Fullington, Sr. leases the Premises to FABCO.

9. Denied. On the contrary, FABCO's business was operated and managed by Fullington, Sr. and his wife Mildred Fink "Tillie" Fullington until October 1999. Thereafter FABCO was operated and managed by Fullington, Sr. and his son Michael Lee Fullington until November 27, 2002. Fullington GMC was managed and operated by Fullington, Sr. and his son J. Richard Fullington, Jr. ("Fullington, Jr.") until May, 2001, FABCO's business was operated and managed by Fullington, Sr. and his eldest son, J. Richard Fullington, Jr. In May, 2001, Fullington, Jr. was separated from Fullington GMC.

10. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

11. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof

thereof is demanded at trial if relevant.

12. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

13. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

14. Admitted that on November 27, 2002, Fullington, Sr. transferred seventy-five (75%) percent of the issued and outstanding capital stock of FABCO, and seventy-five (75%) percent of the Class A voting stock of Fullington GMC to Aerial and Michael and relinquished control of the Companies' businesses to Aerial and Michael. In return for this transfer certain promises and covenants were made to defendant all of which are set out in the attached copy of the Agreement designated Exhibit "1" which Exhibit is incorporated herein as if set out in full. Thereafter the covenants were breached by plaintiffs and their agents.

Admitted upon information and belief that at some time after November 27, 2002 Michael transferred certain shares of FABCO which he owned to Aerial thereby making Aerial majority shareholder of FABCO.

15. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. Upon information and belief it is averred that payments toward the former Fullington GMC Sales, Inc. building in Lawrence Township, Clearfield County, PA and the companies debts to defendant are not current.

16. Admitted that on or about April 17, 2003, a Unanimous Written Consent was executed by the Directors of FABCO naming Aerial the President and Chief Executive Officer and Fullington, Sr. was named Chairman Emeritus. On the same date, a Written Consent was also executed by Aerial and Michael, as Directors of Fullington GMC, naming Aerial as President and Chief Executive Officer of Fullington GMC and Fullington, Sr. was named Chairman Emeritus.

In further answer hereto it is alleged that "Chairman Emeritus" is not the same and is a lesser position than "Chairman of the Board for life" to which Fullington, Sr. was entitled by Agreement of November 27, 2002 at paragraph 4.

17. Denied that in April, 2003, following Aerial's election as President and Chief Executive Officer of FABCO, Fullington, Sr. began to engage in belligerent and disruptive behavior by coming to the Premises, and:

(a) Denied. On the contrary, defendant did not state to FABCO's employees that he, and not Aerial or Michael, was the owner and in charge of FABCO;

(b) Denied. On the contrary, defendant did not make derisive and demeaning comments and statements about the Companies' management to employees and did not often use loud, profane and vulgar language, which is inappropriate in business offices and highly disturbing to employees;

(c.) Denied. On the contrary, defendant did not physically strike Aerial at the Premises in the presence of Michael Peduzzi, FABCO's Chief Financial Officer on July 14, 2003; she, Aerial began to holler and waive papers in defendant's face and tell defendant to get out of Peduzzi's office because defendant did not knock on the door before he came in to the CFO's Office. Defendant merely tried to defend his face and glasses from the wildly waiving papers.



(d) Denied. On the contrary, defendant did not intimidate or berate FABCO's employees;

(e) Denied. On the contrary, defendant did not direct employees to ignore the Companies' management direction; and,

(f) Denied. On the contrary, after November 27, 2002 defendant did not state to third parties that he was and is in control of FABCO's business.

18. Admitted that on September 11, 2003, a few weeks following Fullington, Jr.'s release from prison, the Boards of Directors of the Companies met at which time a motion was made and seconded by Fullington, Sr. to adopt resolutions regarding the Companies' disassociation with Fullington, Jr. The directors of FABCO and Fullington GMC, including Fullington, Sr., adopted the following resolutions by unanimous written consent ("Resolutions"):

Resolved that from this date and time, John R. Fullington, Jr., a/k/a J. Richard Fullington, Jr.:

1. Be prohibited from going upon or entering any of the premises owned or leased by the company and a notice be served upon J. Richard Fullington, Jr. that any violation shall be a trespass and charges will be filed.
2. Be prohibited from any form of communicating with any company officers, directors, employees, agents, lenders, lessors, lessees or any person, party, company, partnership, corporation or otherwise who has a business or professional relationship with Fullington GMC Sales, Inc. and/or Fullington Auto Bus Company, concerning or relating to these businesses.
3. That all persons employed by the company be notified of these resolutions by posting the same on conspicuous parts of the company premises.
4. That all employees shall immediately notify an officer of the company in the event of any communication from Dickie [Fullington, Jr.] concerning company business or personnel.
5. That a notice be served upon J. Richard Fullington, Jr. that notice of any violation by him of these resolutions shall be

immediately sent to the Pennsylvania Board of Probation and Parole.

6. That no company-related documents, facilities or equipment, including but not limited to financial reports, credit information, books and records of the corporation, including notes, memos, letters, tapes, computer information, files, computers, keys, combinations and vehicles shall be delivered to or otherwise be made available to J. Richard Fullington, Jr. or any third party acting for and in behalf of J. Richard Fullington, Jr.

19. Admitted that on September 23, 2003, the Directors of FABCO and Fullington GMC amended the respective Company's Bylaws to expressly provide that "[FABCO or Fullington GMC] designates that any convicted felon shall not be allowed to hold shares of the Corporation."

20. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

(a) Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

(b) Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

(c.) Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant.

(d) Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof

thereof is demanded at trial if relevant.

21. Denied. On the contrary, defendant did not provide any keys to Fullington, Jr. on or about September 1, 2003 or at any time subsequent thereto.

22. Denied. On the contrary, no one spoke orally to defendant about any granting of keys to Fullington, Jr. and the first he knew of this allegation was when he received the letter dated September 22, 2003 signed by Attorneys David S. Ammerman and Bela A. Karlowitz. There was also a time when Attorney David S. Ammerman came into the Fullington Garage where defendant was sitting and speaking with the parts man, Tom James, and Attorney Ammerman told defendant to leave the premises ("you've gotta get out of here). Defendant did leave the premises without further discussion. The letter of September 22, 2003 did deal with issues as to Fullington, Jr.

23. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. The locks were changed and defendant was not provided a key but the exact date is not known.

24. Denied. On the contrary, defendant did not provide any keys to Fullington, Jr. on or about September 14, 2003 or at any time subsequent thereto.

25. Denied. On the contrary, defendant indicated he was considering bringing Fullington Jr. in after his parole was up in about 6 years. Defendant made his statement in a bout of exasperation with the two counsel for FABCO (Attorneys David S. Ammerman and Bela A. Karlowitz who were both then speaking to him in a conference call) because they were in the process of that phone call in effect withdrawing all the promises to which defendant was entitled by the Agreement of November 27, 2002 and attempting to impose further restrictions on him. Defendant

did not say Aerial and Michael had no authority to act for FABCO.

26. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. Denied that defendant "misbehaved" as that term has no legal application and is a term of derision not capable of being responded to. It is believed and therefore averred that the motive for plaintiffs' breach of the Agreement of November 27, 2002 in or about September 2003 was one of spite because Aerial had been unsuccessful in her attempts to find a physician who would declare defendant to be mentally incompetent so she could act as his attorney-in-fact. The allegations here are so vague as to be unintelligible e.g. "Failure to protect" and "continuing behavior which threatens the future of the company". Defendant was entitled to be Chairman of the Board for his lifetime per paragraph 4. of the said Agreement. Defendant was neither notified of nor in attendance at the board meeting of September 16, 2003 in violation of his rights as Chairman of the Board and as expressly set out in paragraph 4. d. of the Agreement of November 27, 2002

27. Admitted that the letter was sent and some funds were paid pursuant to it but defendant never agreed or acquiesced to the change in terms from the November 27, 2002 Agreement nor is he bound by the terms of the letter of September 22, 2003. Defendant was already entitled to a vehicle of his choice to be serviced and maintained by FABCO.

28. Denied. On the contrary the letter is an attempt to unilaterally change the terms of the transfer of stock which enabled Aerial and Michael to be shareholders and defendant has never acquiesced to this nor is he bound by this offer to change the deal. Plaintiffs have failed to meet their obligations under the terms of the November 27, 2002 Agreement.

29. Denied. On the contrary, the terms and conditions of the Resolutions of September 11, 2003 are not being violated by defendant and he is not bound by the terms of the letter of September 22, 2003 and he cannot therefore be deemed to have violated them:

(a) Denied. On the contrary, he cannot breach what he is not bound by but further he does not claim to the world that he owns the Companies;

(b) Denied. On the contrary, he cannot breach what he is not bound by but further he does not assert to the Companies' employees and third parties that he, and not the Companies' duly constituted and appointed management, is in control of and operating the Companies although it is true that he is the Chairman of the Board;

(c.) Denied. On the contrary, he cannot breach what he is not bound by but further he does not direct the Companies' employees to ignore or disregard the direction given by management;

(d) Denied. On the contrary, he cannot breach what he is not bound by but further he entitled to have an office at the Clearfield place of business (316 Cherry Street, Clearfield, PA) which is fully equipped and furnished as befits his status as Chairman of the Board pursuant to paragraph 4. a. of the Agreement of November 27, 2002. Defendant has not been on the premises of either defendant since September 2003 except for two minutes in October 2003 when he went in the office to retrieve his telephone book and his briefcase;

(e) Denied. On the contrary, he cannot breach what he is not bound by but on one occasion a person in DuBois (a Mr. Gertz) who was waiting on defendant to sell him an electrical fuse initiated the discussion about selling or leasing land, bus terminal, and garage to FABCO. Defendant told Mr. Gertz to call the Clearfield office of FABCO at 814-756-7871 to discuss it if he

cared to pursue the matter further. Apparently Mr. Gertz called FABCO but until defendant was served with this law suit he did not know Mr. Gertz called.

(f) Denied. On the contrary, except as stated in paragraph 25 above, defendant has not made any such statement about Fullington, Jr.

(g) Denied. On the contrary, there was a \$50,000 loan taken out by Fullington, Jr. and his mother Tillie from PNC Bank the funds from which were used for the benefit of FABCO and Fullington GMC. Plaintiffs have refused to reimburse defendant for the payments which he has made and have refused to convert the loan to FABCO's name. As of February 23, 2004 Michael Peduzzi, Treasurer and CFO of plaintiffs assured defendant that plaintiffs would switch the loan over to plaintiffs' names.

(h) Denied. On the contrary, he has not intimidated, harassed, berated or disrupted the Companies' employees nor has he done anything to impair their productivity or make their employment onerous and burdensome;

(i) Denied. On the contrary, he has not called employees at home to berate them or nor has he made therein demands of them nor used foul language with them or their family members.

(j) Admitted. The companies do in fact owe him money and have refused to account to him for these funds. Furthermore the companies have from time to time changed the amounts they paid him and among other things have breached their November 27, 2002 Agreement.

30. Denied. On the contrary, the terms and conditions of the letter were never accepted, agreed to, nor acquiesced to by defendant so these terms are not capable of being breached by defendant. Moreover these allegations have been dealt with in paragraph 29 a-j above. There was

a meeting on or about December 22, 2003 but the only ones present were defendant, Aerial and her husband Milton Weisman.

31. Admitted that Fullington, Sr. was again told at the December 22 meeting that:

- (a) he was not to advise anyone that he was acting on behalf of the Companies;
- (b) he was not to call any of the Companies' employees;
- (c.) he was not to come to the Premises; and,
- (d) he was not authorized to act on behalf of the Companies.

but denied that the persons speaking to defendant on that date had any authority to make such demands or place such restrictions upon him.

32. Admitted that in addition, payments to be made to Fullington, Sr. were again discussed and he was offered to select one (1) of the two (2) company vehicles which he currently used.

33. Denied. On the contrary, defendant believes and avers that he is entitled to all the benefits of the November 27, 2002 Agreement, the repayment of his personal loans to the corporation or to the return to him of his stock as he owned it prior to November 27, 2002.

34. Denied. On the contrary, there were no terms or conditions to which defendant could be held and he did not enter into any contractual agreement and the plaintiffs have not alleged what oral agreements there were nor which one or more were violated. This allegation is incapable of being responded to further.

#### **ANSWER TO REQUEST FOR RELIEF**

35. Paragraphs 1 through 34 of this Answer are incorporated herein by reference as though they were set forth in full at this point.

36. Denied. On the contrary, after reasonable investigation defendant is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. To the extent that this allegation can be understood defendant states that he is not bound by the letter of September 22, 2003 nor by any demands or restrictions attempted to be placed upon him by his daughter at their meeting with him on December 22, 2003.

37. Denied. On the contrary, defendant's conduct is nothing more than disagreements with some of his daughter's opinions as well as defendant's objections to the breach of the November 27, 2002 Agreement and inquiry as to when the plaintiffs will pay the debts they owe him. None of these positions will cause any harm to the plaintiffs but are legitimate issues he has with the management of plaintiff companies and determination of his rights.

38. Denied. On the contrary, there is no impending harm to Plaintiffs from the conduct of defendant and on the contrary the defendant is the one who has been harmed.

(a) Denied. On the contrary, there has been no monetary harm and there will be no monetary harm to plaintiffs due to actions of defendant;

(b) Denied. On the contrary, there has been no harm to employees, creditors and shareholders of the Companies and to the public and there will be no harm, destruction or serious interference with the business of FABCO by defendant; and,

(c.) Denied. On the contrary, there has been no harm to employees, creditors and shareholders of the Companies nor to the public nor destruction of FABCO's reputation by defendant.



**NEW MATTER**

39. On November 27, 2002, Fullington, Sr. transferred seventy-five (75%) percent of the issued and outstanding capital stock of FABCO, and seventy-five (75%) percent of the Class A voting stock of Fullington GMC to Aerial and Michael and relinquished control of the Companies' businesses to Aerial and Michael. In return for this transfer certain promises and covenants were made to defendant all of which are set out in the attached copy of the Agreement designated Exhibit "1" which Exhibit is incorporated herein as if set out in full.

40. Defendant was entitled to be Chairman of the Board for his lifetime as to both plaintiff corporations.

41. Defendant was entitled to be a member of the board of directors of both plaintiff corporations.

42. Defendant was entitled to retain an office at the Clearfield place of business furnished and equipped as befits his status as Chairman of the Board.

43. Defendant was entitled to have access to all records and company personnel; notice of all meetings of the Board of Directors in writing at least 24 hours in advance; notice of any meeting with respect to financial or other business which may materially affect the company; and a company vehicle of his choice, serviced and maintained by FABCO.

44. The covenants and promises made to defendant in Exhibit "1" were breached by plaintiffs and their agents in that they:

A. Removed defendant from the Board of Directors and as Chairman of the Board.

B. Removed defendant from his Clearfield office and told him that he must obtain prior permission from corporate counsel if he should ever desire to visit.

C. Have intentionally failed to notify defendant of Board Meetings and other meetings which may materially affect the company.

45. At defendant's request the accounting firm of Johnston, Nelson & Shimmel, LLP provided a written statement detailing the dollar amounts of the loans shown on the books of plaintiff companies as owing to defendant as well as the number of shares owned by defendant before and after the November 27, 2002 Agreement. Attached hereto, marked as Exhibit "2" and incorporated herein as if set out in full is the statement of December 19, 2003 signed by Charles R. Johnston, CPA of the aforesaid accounting firm.

46. Plaintiff, Fullington GMC Sales, Inc. owes defendant at least \$75,821 plus interest from at least December 31, 2002 to ultimate date of payment.

47. Plaintiff, FABCO owes defendant at least \$79,877.85 plus interest from at least December 31, 2002 to ultimate date of payment.

#### **COUNTERCLAIM**

NOW comes defendant by his counsel Timothy E. Durant and sets out his counterclaim for relief as follows:

48. The contents of paragraphs 1-47 above are incorporated herein as if set out in full.

49. Due to breach by plaintiffs and their officers, agents servants and directors of the Agreement of November 27, 2002 in withdrawing positions and perquisites promised to defendant and imposition of obligations upon him not contained within the Agreement plaintiffs have caused a failure of consideration.

50. Defendant's rights to the ownership of the stock conveyed as a part of the Agreement of November 27, 2002 must be restored to him.

51. Defendant hereby rescinds his transfer of stock and demands its return to his ownership.

52. Defendant is entitled to be restored to his position as member of the Board of Directors as well as Chairman of the Board.

53. Plaintiffs have steadfastly refused to repay defendant for the loans owed him.

54. Defendant demands that he be permitted to review the corporate books and that he be provided with an accounting of all the amounts owed to him together with such interest as may appear to be appropriate under all the circumstances and repayment of such sums to him forthwith.

WHEREFORE, Defendant requests that this Court:

A. Expressly reject the terms and conditions of the September 22, 2003 Letter as having been unilaterally imposed upon and not agreed to by the defendant, and

B. Further the defendant requests that this Court expressly reject any and all matters referred to as "terms and conditions" purported to have been outlined orally by Aerial and Michael at the December 22, 2003 meeting as they are vague, unknowable and infringe upon defendant's Constitutionally protected rights of Association, Freedom of Speech, Ownership of Private Property and the Pursuit of Happiness. and

C. Dismiss the Equity action against the defendant. and

D. Find the plaintiffs to have come into court with unclean hands due to the unilateral breach of the Agreement of November 27, 2002 and the attempt to impose conditions upon defendant beyond those contained within the aforesaid Agreement. and

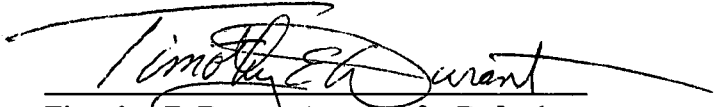
E. Grant the defendant's counterclaim and require the plaintiffs by their agents to restore defendants' position on the board of directors and as Chairman of the Board and then

return his shares of stock for breach of their covenants contained in the November 27, 2002 Agreement. and

F. Order an accounting and thereafter re payment to defendant of such principal and interest as may be appropriate under the circumstances. and

G. That this Court grant such other and further relief as the Court deems proper.

Respectfully submitted,



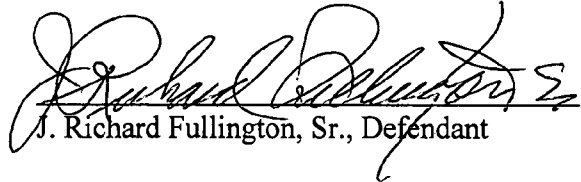
Timothy E. Durant, Attorney for Defendant  
J. Richard Fullington, Sr.

Date: February 24, 2004

**VERIFICATION**

I, J. RICHARD FULLINGTON, SR. Verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904, relating to unsworn falsification to authorities.

Dated: 2/23/04

  
J. Richard Fullington, Sr., Defendant

**AGREEMENT**

MADE this 27th day of November, 2002 by and between **J. RICHARD FULLINGTON, SR.**, of Clearfield, Pennsylvania, party of the first part, hereinafter referred to as "Dick, Sr.", individually and as executor and trustee of the **MILDRED F. FULLINGTON ESTATE**;

A N D

**AERIAL F. WEISMAN**, of Pittsburgh, Pennsylvania, party of the second part, hereinafter referred to as "Aerial";

A N D

**MICHAEL L. FULLINGTON**, of State College, Pennsylvania, party of the third part, hereinafter referred to as "Michael".

**BACKGROUND**

This is an agreement between father and two of his children. Another son, J. Richard Fullington, Jr. (Dickie) is not a part of this agreement and is not intended to be, now, or in the future, a beneficiary of this agreement.

For over 100 years the Fullington family has provided busing service, first on a local level and later throughout the United States and Canada. The Fullington Auto Bus Company, Inc. (FABCO) was incorporated in 1917. Following his father, Dick, Sr. and later with his wife, Mildred F. Fullington (Tillie), operated the bus company and obtained a General Motors franchise in 1964 under the name of Fullington GMC Sales, Inc. (GMC Sales). With the death of his wife, Tillie, in 1999, Dick, Sr. became the executor and trustee of his wife's estate, including her shares of stock in both companies. Dick, Sr. and the Mildred F. Fullington Estate own all of the GMC Sales stock and 61.3% of the FABCO shares.

**PURPOSE**

It is the purpose of this agreement as to each corporation to provide for the transfer of shares, the appointment of directors, the amendment of bylaws to provide for a chairman of the board and, in certain instances, a super majority vote, and to provide certain assurances to Dick, Sr. of lifetime position, private office, salary and benefits.

NOW THEREFORE, the parties hereto, intending to be legally bound agree as follows:

1. **STOCK TRANSFER:**

- a. Fullington GMC Sales, Inc.: Dick, Sr. agrees to transfer 75% of his Class A voting shares of stock in Fullington GMC Sales, Inc. to his son, Michael receiving 51% and daughter, Aerial receiving 24% with Dick, Sr. retaining 25%.
- b. Fullington Auto Bus Company: Dick, Sr. agrees to transfer 75% of his FABCO stock with his son, Michael, receiving 51% and to daughter, Aerial, 24%, with Dick, Sr. retaining 25%.
- c. Dick, Sr. agrees to execute and deliver to the two corporations' secretaries the necessary stock powers to transfer said shares concurrently with the signing of this agreement by all parties.

2. **APPOINTMENT OF DIRECTORS:** Dick, Sr., Aerial Weisman and Michael Fullington shares constitute the Board of Directors of both Fullington GMC Sales, Inc. and Fullington Auto Bus Company.

3. **AMENDMENT OF BY-LAWS:** The bylaws of both corporations shall be amended and as follows:

- a. To provide for the office of Chairman of the Board of Directors.
- b. To provide that the vote of directors representing 80% or more (super majority) of the shareholders be, in the following circumstances, required to pass:
  - (1) A resolution to sell, lease or mortgage the company or any major asset.
  - (2) A resolution to buy, consolidate or merge with another company.
  - (3) A resolution to sell or gift shares in the company to any third party not a party to this agreement.
  - (4) A resolution to declare bankruptcy.

(5) A resolution to fill a vacancy in the office of director, president, secretary or treasurer of the corporation.

(6) A resolution to dissolve the corporation or form a new corporation.

c. To restrict sales of stock by providing that shares be first offered to the corporation with said restriction placed on each stock certificate issued by the corporation.

4. **DICK, SR.:** The parties hereto agree that Dick, Sr. shall for life hold the office of Chairman of the Board and be entitled to the following:

a. His own office at the Clearfield place of business, furnished and equipped as befits his status as Chairman of the Board.

b. Access to all records and company personnel.

c. A company vehicle of his choice, serviced and maintained by Fullington Auto Bus Company.

d. Notice of all meetings of the Board of Directors in writing (including fax) at least 24 hours in advance.

e. Notice of any meeting with respect to financial or other business which may materially affect the company.

f. The salary, rents and benefits as presently being received by Dick, Sr. from Fullington Auto Bus Company as follows:

1. \$535.00 salary per pay for 24 pays \$12,840.00 per year. ✓

2. \$800.00 per month office rent.

3. \$5,400.00 real estate taxes (approximate per year) for properties. ✓

4. \$50.00 per week expense money (cash). ✓

5. \$500.00 per month (approx) for GM credit card. ✓

6. \$1,258.00 per year for homeowners insurance on his home and Sabula property. ✓

7. \$150.00 for outdoor home maintenance. ✓


8. \$100.00 approximate per month for reimbursement on business expenses (lunches, meetings, etc.) ✓

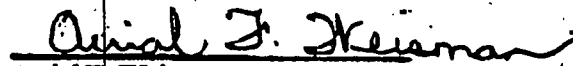
9. A maximum of \$20,000.00 per year draw as needed fund. ✓

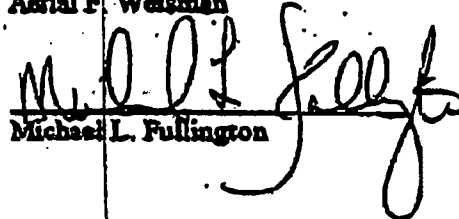


The within agreement shall be in full force and effect upon the execution by all parties and the parties shall be legally bound to carry out the executory provisions set forth herein within 15 days of the date set forth above.

IN WITNESS WHEREOF, the undersigned have set their hands and seals effective the day and year first above written.

  
Richard Fullington, Sr.,  
individually and as executor and  
Trustee of the Mildred F.  
Fullington Estate

  
Aerial F. Weisman

  
Michael L. Fullington

**JOHNSTON, NELSON & SHIMMEL, LLP**  
**CERTIFIED PUBLIC ACCOUNTANTS**

**106 EAST PINE STREET**  
**PO BOX 566**  
**CLEARFIELD, PENNSYLVANIA 16830-0566**

**Charles R. Johnston, CPA**  
**Dennis R. Nelson, CPA**  
**Douglas G. Shimmel, CPA**  
**Brent A. Thomas, CPA**

**TELEPHONE:**  
**(814) 765-7831**  
**FAX ONLY:**  
**(814) 765-6039**  
**E-MAIL ADDRESS:**  
**jnscpa@charter.net**

December 19, 2003

J. Richard Fullington, Sr.  
6 NW 4<sup>th</sup> Avenue  
Clearfield, PA 16830

**RE: Intercompany loans/stock ownership**

Dear Dick:

I have looked over our records and found the following information regarding amounts owed to you by the two corporations.

According to our records, Fullington GMC has loans payable to you as of December 31, 2002, totaling \$75,821. Fullington Auto Bus Company had loans payable to you as of June 30, 2002, totaling \$64,877.85. The amount payable to you from Fullington Auto Bus Company does not include the \$15,000 transfer from the Putnam funds.

Unfortunately, our records do not have any detail of the source or nature of these loans; it only shows the totals per the corporate records.

According to my records, you owned 190.5 shares in Fullington Auto Bus Company. Assuming you transferred 75% of your shares to your children, that would leave you with approximately 48 shares still in your possession (this ignores fractional shares.)

According to my records, you owned 550 voting shares in Fullington GMC Corp. Assuming you transferred 75% of your shares to your children, that would leave you with 137.5 shares in your name.

If there are any questions on the above, please call.

Respectfully,



Charles R. Johnston, CPA

CRJ/rjg

EXHIBIT "2"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION EQUITY

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,  
Plaintiffs,

vs.

J, RICHARD FULLINGTON, SR.,  
Defendant

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:  
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No. 03-1904-CD

REPLY TO PETITION FOR  
PRELIMINARY INJUNCTIVE  
RELIEF

FILED ON BEHALF OF: Defendant

COUNSEL FOR THIS PARTY:

Timothy E. Durant  
Pa. I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
814-765-1711

OPPOSING COUNSEL:

David S. Ammerman  
Pa. Id. No. 06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus  
Pa. Id. No. 01399  
SCHNADER, HARRISON, SEGAL & LEWIS,  
LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(512) 577-5200

**FILED**

**FEB 24 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,  
Defendant.

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No. 03-1904-CD

**REPLY TO PETITION FOR PRELIMINARY INJUNCTIVE RELIEF**

Defendant, through his undersigned counsel, files this Reply to the Petition for a preliminary injunction pursuant to Pa. R.C.P. No. 1531, and in support thereof alleges as follows:

1. Denied that J. Richard Fullington, Sr. can be properly referred to as a former officer and director of the Companies, and a minority shareholder of the Companies. On the contrary, it is averred that defendant was wrongly removed from his position as director and since plaintiffs have breached their arrangement with defendant he has rescinded the transfer of his stock and is therefore the majority shareholder. Admitted that the parties to this action are Plaintiffs, FABCO and Fullington GMC, Pennsylvania corporations, and Defendant J. Richard Fullington, Sr.

2. Admitted that the Companies filed a verified Complaint in Equity ("Complaint") with the Prothonotary of this Court, with a true and correct copy of attached thereto as Exhibit "A", together with an Affidavit of Aerial Fullington Weisman in support of their Petition for Preliminary Injunctive Relief. Defendant has filed an Answer, New Matter and Counterclaim to the complaint.

3. Denied. On the contrary, defendant has not engaged in actions which are highly likely to result in the diminution or destruction of the Companies' businesses or result in a violation

of the Companies' forbearance agreements with their outside lenders.

4. Denied. On the contrary, defendant has not engaged in harmful conduct and the status quo is not in any danger. It is believed that this action is merely an attempt by Aerial Fullington Weisman to show her father, the defendant herein, that she is in charge and that he must fully regard her wishes.

Plaintiffs have breached the terms of their underlying agreement with defendant dated November 27, 2002 which was the operative document by which Aerial obtained the her shares without payment of any sort.

Aerial has in 2003 unsuccessfully attempted to have defendant declared physically or mentally incapacitated in order that she could exercise her authority over defendant by a certain springing power of attorney dated May 5, 2003. Being unsuccessful in that effort she began from about September 2003 to present to try to exercise control over defendant.

The plaintiff companies face no harm from defendant.

5. Denied. On the contrary, the Companies have suffered no current nor do they face any impending harm from Fullington, Sr. because he has committed no breach in fact it is the plaintiffs who have breached their agreements with defendant as set out in defendant's Answer, New Matter and Counterclaim all of which are incorporated herein by reference as if set out in full:

- (a) Denied. On the contrary Fullington, Sr. has not disrupted he has merely tried to exert his rights under the Agreement of November 27, 2002 and obtain payment of his debts as owed to him by plaintiffs; and
- (b) Denied. On the contrary Fullington, Sr. has not done anything to destroy the Companies nor harm the employees, creditors, shareholders or the general public.

6. Denied. On the contrary, Fullington, Sr. has not commenced any harmful conduct but has been dealt with poorly by plaintiffs as they have breached their agreement and defendant has elected to rescind the stock transfer due to the failure of plaintiffs to honor the condition subsequent to the transfer all as more fully set forth in his Answer, New Matter and Counterclaim.

7. Denied. On the contrary, no injunction is warranted or needed and no emergency exists.

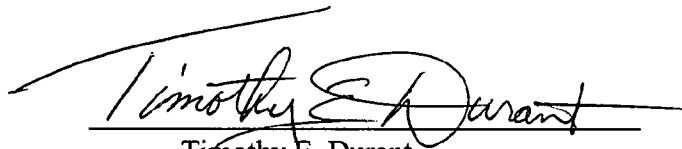
8. Denied. On the contrary, the Companies are likely to fail on the merits of their claims in that:

- (a) The companies by their Board members have breached many of their obligations to defendant and their efforts to unilaterally change his rights to better suit them will fail; and
- (b) Denied. On the contrary, defendant has not breached any obligations that he owes to plaintiffs but they have breached their obligations and attempted to cast him in a bad light.

WHEREFORE, defendant respectfully requests that this Court dismiss the request for a preliminary injunction against him as unnecessary and unwarranted.

Date: February 24, 2004

Respectfully submitted,

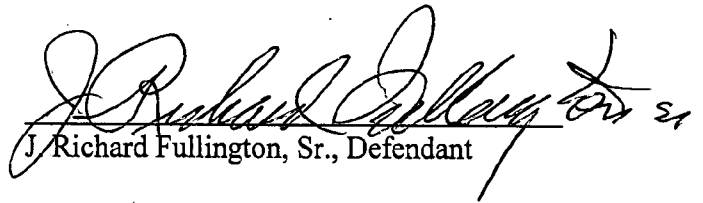
A handwritten signature in black ink, reading "Timothy E. Durant", is written over a horizontal line.

Timothy E. Durant  
Pa I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
814-765-1711

VERIFICATION

I, J. RICHARD FULLINGTON, SR. Verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904, relating to unsworn falsification to authorities.

Dated: 2/23/04

  
J. Richard Fullington, Sr., Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION EQUITY

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

vs.

J, RICHARD FULLINGTON, SR.,

Defendant

No. 03-1904-CD

**FILED**

**FEB 24 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**


I, MICHAEL LUONGO, verify that on February 24, 2004, I did deposit in the United States First Class Mail certified copies of the Answer To Complaint In Equity, New Matter and Counterclaim and Reply to Petition For Preliminary Injunctive Relief filed on behalf of the Defendant. The said documents were sent to counsel for Plaintiffs' as follows:

David S. Ammerman  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830

Paul H. Titus  
SCHNADER, HARRISON, SEGAL & LEWIS, LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: February 24, 2004

  
Michael Luongo  
201 North Second Street  
Clearfield, PA 16830



Court  
CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,  
Plaintiffs,

v.

J. RICHARD FULLINGTON, SR.,  
Defendant.

No. 03-1904-CD

**JOINT MOTION FOR CONTINUANCE**

**COUNSEL FOR PLAINTIFFS:**

David S. Ammerman  
PA I.D. #06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus  
PA I.D. #01399  
SCHNADER HARRISON SEGAL  
& LEWIS, LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(412) 577-5200

**COUNSEL FOR DEFENDANT:**

Timothy E. Durant  
PA I.D. #21352  
201 North Second Street  
Clearfield, PA 16830  
(814) 765-1711

**FILED**  
MAR 02 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION EQUITY

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

v.

J. RICHARD FULLINGTON, SR.,

Defendant.

No. 03-1904-CD

JOINT MOTION FOR CONTINUANCE

The plaintiffs, Fullington Auto Bus Company and Fullington GMC Sales, Inc., by their undersigned counsel, and the defendant, J. Richard Fullington, Sr., by his undersigned counsel, hereby jointly move for a continuance of the hearing scheduled in this matter for March 3, 2004.

In support of this motion, the parties state:

1. Defendant J. Richard Fullington, Sr. is suffering from severe back pains which makes it difficult for him to perform his duties. He is currently seeking medical treatment for his condition. It would be extremely painful and uncomfortable for him to attend court on the scheduled date.

2. No disruption of business will result from the continuance of this matter. The members of the management of Fullington Auto Bus Company and Fullington GMC Sales, Inc. are all well and are not affected by the illness of Mr. Fullington, Sr.

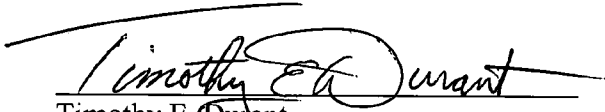
3. Under the provisions of the Pennsylvania Rules of Civil Procedure, the court has the power to grant a continuance of this matter. The court's decision is based on the need for relief under either the Complaint or the Counterclaim.

*copied this & sent  
orig. to William  
3-2-04 - will send let  
back whenever he returns  
it to me. - Charles.*

*rn*

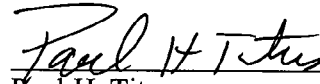
WHEREFORE, the parties move that this Court enter an order continuing the hearing in this matter generally. Such motion is made without prejudice to either plaintiffs or the defendant. Either party may at any time in the future request a hearing from the Court should it deem Court relief necessary.

Respectfully submitted,



Timothy E. Durant  
PA I.D. #21352  
201 North Second Street  
Clearfield, Pennsylvania 16830  
814-765-1711

*Attorney for Defendant  
J. Fullington, Sr.*



Paul H. Titus  
PA I.D. #01399  
Schnader Harrison Segal & Lewis, LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, Pennsylvania 15222-3001  
412-577-5200

*Attorneys for Plaintiffs The Fullington  
Auto Bus Company and Fullington GMC  
Sales, Inc.*

## CA

No. 03-1904-CD

AND NOW, this 4 day of March 2004, the Joint Motion for Continuance submitted

BY THE COURT

J. Michael Williamson, Judge

25th Ind Dist

Sp. thes

**FILED**

MAR 08 2004

William A. Shaw  
Prothonotary

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

THE FULLINGTON AUTO BUS COMPANY and FULLINGTON GMC SALES, I

Sheriff Docket #

15001

VS.

03-1904-CD

FULLINGTON, J. RICHARD SR.

COMPLAINT IN EQUITY

**SHERIFF RETURNS**

NOW JANUARY 9, 2004 AT 3:40 PM SERVED THE WITHIN COMPLAINT ON J. RICHARD FULLINGTON SR., DEFENDANT AT RESIDENCE, 6 NORTHWEST FOURTH ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO J. RICHARD FULLINGTON SR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: COUDRIET

**Return Costs**

Cost	Description
20.37	SHERIFF HAWKINS PAID BY: ATTY CK# 7725
10.00	SURCHARGE PAID BY: ATTY CK# 7726

Sworn to Before Me This

10th Day Of March 2004

William A. Shaw

So Answers,

Chester A. Hawkins  
by Mark A. Harris

Chester A. Hawkins

Sheriff

**FILED**

MAR 10 2004

013:10 p.m.

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION – EQUITY  
and FULLINGTON GMC SALES, INC.

No. 03-1904-CD

Plaintiffs,

vs.

Type of Pleading:

J. RICHARD FULLINGTON, SR.

**REPLY TO NEW MATTER AND  
ANSWER AND NEW MATTER TO  
DEFENDANT'S COUNTERCLAIM**

Defendants.

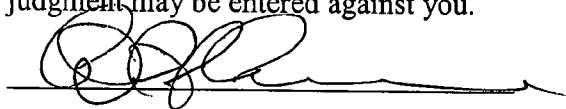
Filed on behalf of: Plaintiffs

Counsel of record for these parties:

David S. Ammerman  
Pa. Id. No. 06801  
AMMERMAN LAW OFFICES  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

NOTICE TO PLEAD

You are hereby notified to file a written  
response to the enclosed New Matter within  
twenty (20) days from service hereof or a  
judgment may be entered against you.



Paul H. Titus  
Pa. Id. No. 01399  
SCHNADER HARRISON SEGAL & LEWIS  
LLP  
Suite 2700 Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5200

**FILED**

MAR 31 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION – EQUITY

THE FULLINGTON AUTO BUS COMPANY	)	
and FULLINGTON GMC SALES, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 03-1904-CD
	)	
J. RICHARD FULLINGTON, SR.,	)	
	)	
Defendant.	)	

**PLAINTIFFS' REPLY TO NEW MATTER**  
**AND ANSWER AND NEW MATTER TO DEFENDANT'S COUNTERCLAIM**

NOW COME the Plaintiffs, The Fullington Auto Bus Company ("FABCO") and Fullington GMC Sales, Inc. ("Fullington GMC") (collectively, the "Plaintiffs" or "Companies") and by their undersigned counsel, hereby file this Reply to Defendant's New Matter and Answer and New Matter to Defendant's Counterclaim, as follows:

**REPLY TO NEW MATTER**

1. The averments contained in paragraph 39 of Defendant's New Matter are admitted in part and denied in part. It is admitted that on or about November 27, 2002, Defendant transferred seventy-five (75%) percent of his issued and outstanding capital stock of FABCO and seventy-five (75%) of the Class A voting stock of Fullington GMC to Aerial Fullington Weisman ("Aerial") and Michael L. Fullington ("Michael") and relinquished control of the Companies to Aerial and Michael. It is further admitted that a copy of an agreement between the Defendant, Aerial and Michael dated November 27, 2002 is attached to the Defendant's Answer to Complaint in Equity, New Matter and Counterclaim. It is denied that, in exchange for the transfer of stock, certain promises and covenants were made to the Defendant

as set forth in the agreement. To the contrary, the stock was transferred from Defendant to Aerial and Michael in exchange for Aerial and Michael agreeing to reorganize the Companies and handle the Companies' operations in order to save both of the Companies' businesses and to protect family members, including Defendant, from the personal liabilities which would flow from the failure of the businesses.

2. The averments contained in paragraphs 40 through 43 of the New Matter are denied as stated. The document speaks for itself. By way of further response, the Companies were not parties to the agreement and, therefore, owe nothing to Defendant. Further, the agreement between the Defendant, Aerial and Michael has been rescinded and is void due to the wrongful conduct of the Defendant.

3. The averments contained in paragraph 44 of the New Matter are denied. It is denied that the Plaintiffs and their agents breached the agreement. To the contrary, the Plaintiffs are not parties to the agreement and, therefore, have no obligations under the agreement. Further, the agreement between the Defendant, Aerial and Michael has been rescinded and is void due to the wrongful conduct of the Defendant.

4. After reasonable investigation, the Plaintiffs are without information sufficient to form a belief as to the truth of the averments contained in paragraph 45 of the New Matter; therefore, the allegations are denied. By way of further response, the Companies state that no monies are owed to Defendant. To the contrary, Defendant has been paid in excess of the amount of money he claims he is entitled to receive under the terms of the November 27, 2002 agreement.

5. The averments contained in paragraphs 46 and 47 of the New Matter are denied. It is denied that either Company owes the Defendant any money. To the contrary, Defendant has



been paid in excess of the amount of money he claims he is entitled to receive under the terms of the November 27, 2002 agreement.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court grant the relief sought in the Complaint in Equity.

**ANSWER AND NEW MATTER TO COUNTERCLAIM**

**ANSWER**

1. The averments contained in paragraphs 1 through 5 of the New Matter and 1 through 38 of the Complaint in Equity are hereby incorporated as if fully set forth herein.

2. The averments contained in paragraph 49 of the Counterclaim are denied. It is denied that the Plaintiffs or their officers, agents, servants and directors breached any agreement with Defendant. To the contrary, the Plaintiffs are not parties to the agreement and, therefore, have no obligations under the agreement. Further, the agreement between the Defendant, Aerial and Michael has been rescinded and is void due to the wrongful conduct of the Defendant. To the extent the averments contained in paragraph 49 of the Counterclaim contain conclusions of law, no response is necessary.

3. The averments contained in paragraph 50 of the Counterclaim are denied. It is denied that the Plaintiffs owe any obligations to the Defendant under the agreement. To the contrary, the Plaintiffs are not parties to the agreement and, therefore, have no obligations under the agreement. Further, the agreement between the Defendant, Aerial and Michael has been rescinded and is void due to the wrongful conduct of the Defendant.

4. The averments contained in paragraph 51 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the Plaintiffs deny the averments. It is denied that the Defendant has the power or legal right to

demand the return of his stock ownership in the Companies. To the contrary, the stocks were transferred to Aerial and Michael in exchange for their agreeing to reorganize the Companies and handle the Companies' operations in order to save both of the Companies' businesses and to protect family members, including Defendant, from the personal liabilities which would flow from the failure of the businesses.

5. The averments contained in paragraph 52 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the Plaintiffs deny the averments. It is denied that the Defendant is entitled to be restored to his position as a member of the Board of Directors as well as Chairman of the Board. To the contrary, board resolutions were passed in accordance with the Companies' bylaws and Pennsylvania corporate laws by the Companies' Boards of Directors removing Defendant as a member of the Boards. Such action was taken due to the Defendant's wrongful conduct in order to protect the Companies and their businesses from harm. Further, prior to his removal from the Boards, the Defendant, as one of the members of the FABCO Board, agreed to be removed as Chairman of the Board and become Chairman Emeritus.

6. The averments contained in paragraph 53 of the Counterclaim are denied. It is denied that the Plaintiffs have refused to repay the Defendant for the loans. To the contrary, Defendant has been paid in excess of the amount of money he claims he is entitled to receive under the terms of the November 27, 2002 agreement.

7. The averments contained in paragraph 54 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is deemed necessary, the Plaintiffs deny the averments. It is denied that the Defendant is entitled to review the corporate books and be provided with an accounting of all amounts owed to him. To the contrary, under

controlling law and the Companies' bylaws, Defendant is not entitled to such relief. By way of further response, Plaintiffs state that the Defendant has been given an accounting of the monies to which he is entitled and amounts received. Additionally, the Companies have been and continue to be willing to provide appropriate corporate records to Defendant for review. Further, Plaintiffs deny that any monies are due and owing to Defendant and must be paid, with interest. To the contrary, Defendant has been paid in excess of the amount of money he claims he is entitled to receive under the terms of the November 27, 2002 agreement.

8. The averments contained in the Wherefore Clause of the Counterclaim are denied. It is denied that the Defendant is entitled to such relief. To the contrary, the Defendant is not entitled to the relief requested.

#### **NEW MATTER**

9. The Companies are not parties to the November 27, 2002 agreement and do not owe any obligations to Defendant under the agreement.

10. The November 27, 2002 agreement is void due to the wrongful conduct of the Defendant.

11. The November 27, 2002 agreement is rescinded due to the wrongful conduct of the Defendant.

12. The Defendant agreed to the terms of the September 22, 2003 letter, a copy of which is attached to the Complaint in Equity as "Exhibit A". To the extent the November 27, 2002 agreement is not found to be void or rescinded, said agreement was superseded by the corporate action of April, 2003 and the terms of the September 22, 2003 letter to which Defendant agreed and which he further ratified orally on or about December 17, 2003.

13. The Defendant has been paid in excess of the amount he claims he is entitled to receive under the November 27, 2002, and the Companies have provided him with a full accounting of all amounts to which he is entitled and has received.

14. Defendant's claims for monies are barred through the doctrine of accord and satisfaction.

15. Defendant consented to his removal as Chairman of the Boards of the Companies.

16. Defendant is estopped from seeking the relief requested due to his wrongful conduct which is set forth in detail in the Complaint in Equity.

17. The Defendant claims are barred due to the doctrine of unclean hands.


WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter judgment in favor of Plaintiffs and against Defendant with respect to the Counterclaim, dismiss the Counterclaim with prejudice, award Plaintiffs attorneys fees and costs, and grant such other relief as this Court deems appropriate.

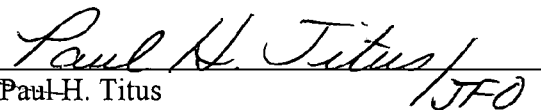
Date: March 31, 2004

Respectfully submitted,

AMMERMAN LAW OFFICES

SCHNADER HARRISON SEGAL & LEWIS LLP

By   
David S. Ammerman  
Pa. Id. No. 06801

By   
Paul H. Titus  
Pa. Id. No. 01399

310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

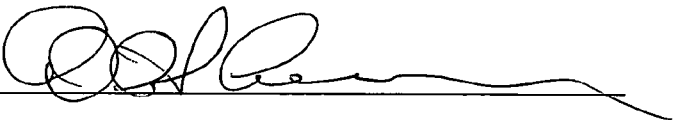
2700 Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5200

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Reply to New Matter and Answer and New Matter to Defendant's Counterclaim was served upon the following counsel by first-class mail, postage prepaid this 31 day of March, 2004:

Timothy E. Durant, Esquire  
201 North Second Street  
Clearfield, PA 16830

A handwritten signature in black ink, appearing to read 'T. E. Durant', is written over a horizontal line.

**VERIFICATION**

Aerial Fullington Weisman hereby states that she is President, Chief Executive Officer and majority shareholder of The Fullington Auto Bus Company, and Acting President, Chief Executive Officer and majority shareholder of Fullington GMC Sales, Inc., the Plaintiffs in this action, and that the statements of fact made in the foregoing Reply to New Matter and Answer and New Matter to Defendant's Counterclaim are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Con. Stat. §4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

3/31/04

Aerial Fullington Weisman  
Aerial Fullington Weisman

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY,  
PENNSYLVANIA CIVIL ACTION  
No. 03-1904-CD

THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON  
GMC SALES, INC., Plaintiffs

v.

J. RICHARD FULLINGTON, SR.,  
Defendant

REPLY TO NEW MATTER AND  
ANSWER AND NEW MATTER TO  
DEFENDANT'S COUNTERCLAIM

**FILED**

MAR 31 2004

03/31/04  
William A. Shaw  
Prothonotary

300 to Att

DAVID S. AMMERMAN  
Attorney at Law  
310 EAST CHERRY STREET  
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,  
Plaintiffs,

vs.

J, RICHARD FULLINGTON, SR.,  
Defendant

:  
:  
:  
:  
:  
:

No. 03-1904-CD

**REPLY TO NEW MATTER**

FILED ON BEHALF OF: Defendant

COUNSEL FOR THIS PARTY:

Timothy E. Durant, Esq.  
Pa. I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
814-765-1711

OPPOSING COUNSEL:

David S. Ammerman, Esq.  
Pa. Id. No. 06801  
AMMERMAN & AMMERMAN  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus, Esq.  
Pa. Id. No. 01399  
SCHNADER, HARRISON, SEGAL &  
LEWIS, LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(512) 577-5200

**FILED**

**APR 12 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON GMC  
SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,  
Defendant.

\*  
\*  
\*  
\*  
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\*  
\*

No. 03-1904-CD

**REPLY TO PLAINTIFFS' NEW MATTER IN COUNTERCLAIM**

NOW COMES the Defendant, J. Richard Fullington, Sr. by and through his undersigned counsel and  
Replies as follows to Plaintiffs' New Matter filed to Defendant's Counterclaim:

9. Denied. On the contrary, the companies are for the purposes of this law suit, mere tools  
of and alter-egos of Defendant's children, Aerial Fullington Weisman and her brother Michael L.  
Fullington. Absent the Agreement of November 27, 2002 neither of Defendant's children would  
have any right to shut their father out of the Fullington Auto Bus business nor "punish" him by  
taking away his property rights and trying to silence him, as before the Agreement of November 27,  
2002 they had no shares and no pretense of control.

10. Agreed that the Agreement of November 27, 2002 is void but on the contrary it is not  
due to any wrongful conduct of Defendant but instead it is void due to the failure of consideration  
by dint of breach by Plaintiffs and their officers, agents servants and directors (Aerial and Michael)  
which breach consisted of withdrawing positions and perquisites promised to Defendant and  
imposition of obligations upon him not contained within the Agreement. As a result and

consequence of the seminal agreement being void, Defendant's rights to the ownership of the stock (ostensibly conveyed to Aerial and Michael as a part of said agreement) must be restored to him. Plaintiffs cannot declare their obligations void but their benefits binding.

11. Agreed that the November 27, 2002 Agreement is rescinded but on the contrary it is not due to any wrongful conduct of Defendant but instead it is rescinded due to the failure of consideration by dint of breach by Plaintiffs and their officers, agents servants and directors (Aerial and Michael) which breach consisted of withdrawing positions and perquisites promised to Defendant and imposition of obligations upon him not contained within the Agreement. As a result and consequence of the seminal agreement being void, Defendant's rights to the ownership of the stock (ostensibly conveyed to Aerial and Michael as a part of said agreement) must be restored to him. Plaintiffs cannot declare their obligations rescinded but their benefits valid and continuing.

12. Denied. On the contrary the letter of September 22, 2003 was an attempt to unilaterally change the terms of the transfer of stock which enabled Aerial and Michael to be shareholders and defendant has never acquiesced to this unilateral change nor is he bound by this attempt to change the deal. Plaintiffs have failed to meet their obligations under the terms of the November 27, 2002 Agreement. Defendant did not acquiesce to the terms of the September 22, 2003 letter and he did not ratify this letter orally at anytime. Perhaps the corporate action of April 17, 2003 was the bestowal of an "additional" title and not a lesser title upon Defendant who was already "Chairman of the Board For Life" and to which he was entitled by the Agreement of November 27, 2002 at paragraph 4.

13. Denied. On the contrary, the plaintiff companies have not paid him nor accounted to him for their debts as set out in Defendant's Exhibit "2" in his Counterclaim which is incorporated herein

by reference as if set out in full. Further, it is averred that Defendant is entitled to have all of his shares of stock back.

14. Denied. This is a conclusion of law and no answer is required. To the extent that an answer may be deemed to be required, Defendant denies that there has been either an accord or a satisfaction. A unilateral change or demand by one party is all that has occurred here.

15. Denied. Defendant did not consent to his removal as Chairman of the Board For Life from the companies. Defendant is entitled to his stock back and he will once again take control and run the companies.

16. This is a conclusion of law and no answer is required. To the extent that an answer may be deemed to be required, Defendant denies that he is estopped from seeking the relief requested in his Counterclaim as he has not wrongfully conducted himself and the breach of the underlying Agreement (of November 27, 2002) has been by Plaintiffs agents, servants, officers and board members. Defendant's defense to the allegations is set forth in his Answer New Matter and Counterclaim as is incorporated herein by reference as if set out in full.

17. This is a conclusion of law and no answer is required. To the extent that an answer may be deemed to be required, Defendant denies that he has unclean hands. On the contrary, Plaintiffs by their agents, servants, officers and board members have unclean hands due to their unilateral breach of the Agreement of November 27, 2002 and their attempt to impose conditions upon Defendant beyond those contained within the aforesaid Agreement


WHEREFORE, Defendant requests that this Court:

A. Grant him all the relief which he sought in the Answer, New Matter and Counterclaim filed on February 24, 2004 which relief is incorporated herein by reference as if set

out in full.

- B. Dismiss the Plaintiffs' New Matter, and
- C. Award Defendant attorney's fees and costs, and
- D. That this Court grant such other and further relief as the Court deems proper.

Respectfully submitted,

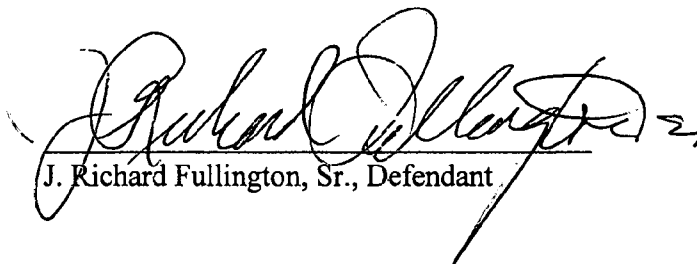
  
Timothy E. Durant, Attorney for Defendant  
J. Richard Fullington, Sr.

Date: April 12, 2004

**VERIFICATION**

I, J. RICHARD FULLINGTON, SR. Verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904, relating to unsworn falsification to authorities.

Dated: April 9, 2004

  
J. Richard Fullington, Sr., Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION – EQUITY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,

Defendant.

No. 03-1904-CD

TYPE OF PLEADING:  
**PLAINTIFFS' MOTION FOR HEARING  
ON PETITION FOR PRELIMINARY  
INJUNCTIVE RELIEF**

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THESE  
PARTIES:

David S. Ammerman, Esquire  
Pa. Id. No. 06801  
AMMERMAN LAW OFFICES  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

Paul H. Titus, Esquire  
Pa. Id. No. 01399  
SCHNADER HARRISON SEGAL & LEWIS  
LLP  
2700 Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5200

COUNSEL FOR OPPOSING PARTY:

Timothy E. Durant, Esquire  
Pa. Id. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
(814) 765-1711

Advised this &  
sent to Judge  
Williamson.  
☺

**FILED**

APR 22 2004

**William A. Shaw**  
**Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY	)	CIVIL ACTION - EQUITY
and FULLINGTON GMC SALES, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 03-1904-CD
	)	
J. RICHARD FULLINGTON, SR.,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MOTION FOR HEARING ON  
PETITION FOR PRELIMINARY INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, The Fullington Auto Bus Company ("FABCO") and Fullington GMC Sales, Inc. (collectively, the "Companies"), by their undersigned counsel, and hereby file this Motion for Hearing on Petition for Preliminary Injunctive Relief, and in support thereof, state as follows:

1. On December 31, 2003, the Companies filed, *inter alia*, a Complaint in Equity and Petition for Preliminary Injunctive Relief in which they asserted that the Defendant's inappropriate and intentional misconduct was harming the Companies, their employees, creditors, shareholders and the public at large and that, unless restrained, the Defendant would cause irreparable harm that could not be compensated with money damages.

2. On February 18, 2004, this Honorable Court entered an Order scheduling the Petition for Preliminary Injunctive Relief for argument on March 3, 2004.

3. On or about March 2, 2004, the parties filed a Joint Motion for Continuance in which they advised the Court that the Defendant's medical condition would make it difficult for him to attend the hearing. Further, the parties indicated that the Defendant was not causing any disruptions at that time at the Companies' places of business; therefore, there was no immediate

need for relief. In light of the parties' Joint Motion for Continuance, the Court entered an Order on March 4, 2004 granting the Joint Motion and continuing the hearing.

4. Recently, the Defendant has again become disruptive and continues to inflict harm on the Companies and their businesses. He recently traveled to FABCO's offices in State College, Pennsylvania and was confrontational and harassing. The Companies have also learned that he has made telephone calls to various organizations, corporations and persons with whom the Companies do business and are affiliated and have proclaimed that he will be taking control of the Companies. In light of these recent developments, the Companies believe that the Defendant's medical condition has improved enough that he will be able to attend the hearing and, unless restrained, the Defendant will continue to inflict harm on the Companies and their businesses.

5. The Companies hereby renew their Petition for Preliminary Injunctive Relief and ask the Court to schedule the Petition for hearing at its earliest convenience so that the Companies may seek the injunctive relief requested.

WHEREFORE, the Plaintiffs, The Fullington Auto Bus Company and Fullington GMC Sales, Inc. respectfully request that this Honorable Court grant their Motion and schedule the Petition for Preliminary Injunctive Relief for a hearing at the Court's earliest convenience.




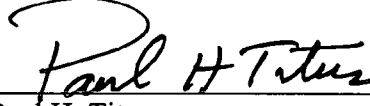
April 30, 2004

Respectfully submitted,

AMMERMAN LAW OFFICES

SCHNADER HARRISON SEGAL & LEWIS LLP

By   
David S. Ammerman  
Pa. Id. No. 06801

By   
Paul H. Titus  
Pa. Id. No. 01399

310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701


2700 Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5200

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Motion for Hearing on Petition for Preliminary Injunctive Relief was served upon the following counsel by first-class mail, postage prepaid this 22 day of April, 2004:

Timothy E. Durant, Esquire  
201 North Second Street  
Clearfield, PA 16830

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

IN THE COURT OF COMMON  
PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION - EQUITY

THE FULLINGTON AUTO BUS  
COMPANY and FULLINGTON  
GMC SALES, INC.,

Plaintiffs

vs.

J. RICHARD FULLINGTON, SR.,

Defendant

PLAINTIFFS' MOTION FOR  
HEARING ON PETITION FOR  
PRELIMINARY INJUNCTIVE  
RELIEF

No. 03-1904-CD

**FILED**

APR 22 2004

*9/10:00 am*

William A. Shaw  
Prothonotary

*Yes to all*

DAVID S. AMMERMAN  
Attorney at Law  
310 EAST CHERRY STREET  
CLEARFIELD, PA 16830

DAVID S. AMMERMAN  
Attorney at Law  
310 EAST CHERRY STREET CLEARFIELD, PA 16830

DA

Copy this  
for Williamson

8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

THE FULLINGTON AUTO BUS :  
COMPANY and FULLINGTON GMC :  
SALES, INC. :

vs. :

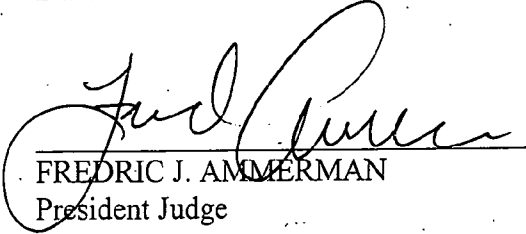
No. 03-1904-CD

J. RICHARD FULLINGTON, SR. :

**ORDER**

AND NOW, this 28 day of April, 2004, it is the ORDER of the Court that argument on Plaintiff's Petition for Preliminary Injunctive Relief in the above matter has been scheduled for **Tuesday, May 18, 2004 at 10:00 A.M.**, before the Honorable J. Michael Williamson, Specially Presiding, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

APR 28 2004

William A. Shaw  
Prothonotary/Clerk of Courts

8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

THE FULLINGTON AUTO BUS :  
COMPANY and FULLINGTON GMC :  
SALES, INC. :

vs. :

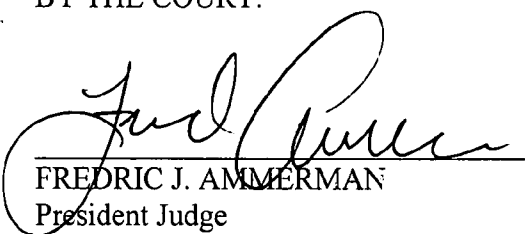
No. 03-1904-CD

J. RICHARD FULLINGTON, SR. :

**ORDER**

AND NOW, this 28 day of April, 2004, it is the ORDER of the Court that argument on Plaintiff's Petition for Preliminary Injunctive Relief in the above matter has been scheduled for **Tuesday, May 18, 2004 at 10:00 A.M.**, before the Honorable J. Michael Williamson, Specially Presiding, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

**APR 28 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
ice. Amy D. Ammerman  
APR 28 2004  
ice Amy Durant  
ice Judge M. Williamson  
William A. Shaw  
Prothonotary/Clerk of Courts

FILED

APR 28 2004

APR 28 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION - EQUITY  
and FULLINGTON GMC SALES, INC.,

No. 03-1904-CD

Plaintiffs,

TYPE OF PLEADING:

vs.

J. RICHARD FULLINGTON, SR.,

WITHDRAWAL OF APPEARANCE

Defendant.

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THESE  
PARTIES:

David S. Ammerman, Esquire  
Pa. Id. No. 06801  
AMMERMAN LAW OFFICES  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701

**FILED**

MAY 13 2004

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,

Defendant.

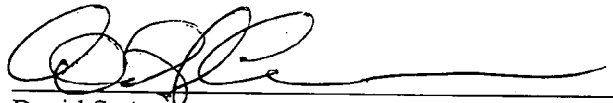
CIVIL ACTION - EQUITY

No. 03-1904-CD

**WITHDRAWAL OF APPEARANCE**

It appearing that the undersigned counsel may be a necessary witness in the proceedings in this case, the undersigned hereby withdraws his appearance as counsel in this matter. All further proceedings will be conducted by co-counsel in the firm of Schnader Harrison Segal & Lewis LLP.

Respectfully submitted,



David S. Ammerman  
PA I.D. #06801  
AMMERMAN LAW OFFICES  
310 East Cherry Street  
Clearfield, PA 16830  
(814) 765-1701


*Counsel for Plaintiffs*

DATED: May 13, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Withdrawal of  
Appearance was served upon the following counsel by regular mail this 13<sup>th</sup> day of May,  
2004:

Timothy E. Durant, Esquire  
201 North Second Street  
Clearfield, Pennsylvania 16830



David S. Ammerman

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

FILED

FULLINGTON AUTO BUS COMPANY  
and FULINGTON GMC SALES, INC.,

Plaintiffs

vs.

J. RICHARD FULLINGTON, SR.,

Defendant

MAY 18 2004

William A. Shaw  
Prothonotary/Clerk of Courts

No. 03-1904-CD

**CONSENT ORDER**

AND NOW, to wit, this 18<sup>th</sup> day of May, 2004, the  
following is hereby agreed to by all parties:

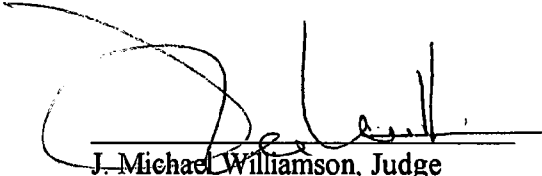
It is hereby ORDERED and DECREED that Defendant, J. Richard Fullington, Sr.  
agrees that he will not:

1. Interfere in any way with the business operations of the  
Plaintiffs;
2. Make statements that he controls the Plaintiffs and their business  
operations pending final resolution of these matters;
3. Make statements or represent that he is authorized to  
act on behalf of or to bind the Plaintiffs pending final resolution of these matters;
4. Enter the Plaintiffs' places of business except for necessary landlord  
purposes and only after making arrangements in advance through his counsel and  
by him through counsel for Plaintiffs.

5. Pending final resolution of these matters and without prejudice to the legal position of either party Plaintiffs agree to pay Defendant the amounts set out in the Agreement of November 27, 2002 and the letter of September 22, 2003, whichever is greater.

This Order shall remain in full force and effect until such time as modified or vacated by the Court.

BY THE COURT:



J. Michael Williamson, Judge  
25<sup>th</sup> Judicial District  
Specially Presiding

FILED

01/12/58  
MAY 18 2004

1cc Amy J. Hrus  
1cc Amy J. Ammerman - courtesy copy  
1cc Amy J. Hrus

William A. Shaw  
Prothonotary/Clerk of Courts

1cc Fullington Auto Bus Co. (per Ammerman's request)  
314 Cherry St. Clear  
Clearfield, PA 16830

1cc Fullington GME Sales, Inc. (per D. Ammerman's request)  
316 East Cherry St.  
Clearfield, PA 16830


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

FULLINGTON AUTO BUS COMPANY	)	
and FULLINGTON GMC SALES, INC.,	)	
Plaintiffs	)	
	)	
v.	)	NO. 03-1904-CD
	)	
J. RICHARD FULLINGTON, SR.,	)	
Defendant	)	

**ORDER**

NOW, this 21st day of May, 2004, counsel are attached on August 31, 2004, September 1, 2004, September 2, 2004, and September 3, 2004, in the above matter, which will be tried without a jury if and when the case of Hoffman v. Cherry, No. 00-96-CD is resolved.

BY THE COURT:

  
J. Michael Williamson, Judge  
Specially Presiding  
25th Judicial District of Pennsylvania

xc: David S. Ammerman, Esquire  
Paul H. Titus, Esquire  
Timothy E. Durant, Esquire  
Court Administrator

J. MICHAEL WILLIAMSON  
JUDGE  
—  
COURT OF COMMON PLEAS  
25TH JUDICIAL DISTRICT  
OF PENNSYLVANIA  
COURT HOUSE  
LOCK HAVEN, PA 17745

**FILED**

**MAY 27 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

THE FULLINGTON AUTO BUS COMPANY CIVIL ACTION – EQUITY  
and FULLINGTON GMC SALES, INC.,

Plaintiffs,

vs.

J. RICHARD FULLINGTON, SR.,

Defendant.

No. 03-1904-CD

TYPE OF PLEADING:  
**PRAECIPE TO SETTLE, DISCONTINUE,  
AND DISMISS WITH PREJUDICE**

FILED ON BEHALF OF:  
Plaintiffs and Defendant

COUNSEL OF RECORD FOR THESE  
PARTIES:

Paul H. Titus, Esquire  
Pa. Id. No. 01399  
SCHNADER HARRISON SEGAL  
& LEWIS LLP  
2700 Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5200

COUNSEL FOR OPPOSING PARTY:

Timothy E. Durant, Esquire  
Pa. Id. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
(814) 765-1711

**FILED**

**AUG 09 2004**

William A. Shaw  
Prothonotary/Clerk of Courts





**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Fullington Auto Bus Company  
Fullington GMC Sales, Inc.**

**Vs.  
J. Richard Fullington Sr.**

**No. 2003-01904-CD**

*Copy*

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 9, 2004, marked:

Matter, including Plaintiffs' claims against Defendant and Defendant's counterclaims against Plaintiffs, settled, discontinued and dismissed with prejudice

Record costs in the sum of \$85.00 have been paid in full by David S. Ammerman, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 9th day of August A.D. 2004.

---

William A. Shaw, Prothonotary